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INTRODUCTION

At its 262nd Session (March-April 1995), the Governing Body of the International Labour Office decided to place on the agenda of the 85th Session (1997) of the International Labour Conference the item concerning the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96). At its following session, the Governing Body determined that the issue would be dealt with by the Conference according to the single-discussion procedure set out in article 38 of the Standing Orders of the Conference. In accordance with the provisions of this article, the Office has drawn up this report with a view to the Conference.

The resolution and conclusions concerning the role of private employment agencies in the functioning of labour markets, adopted by the Conference at its 81st Session (1994),[1] had an important influence on the Governing Body's decision to envisage a revision of Convention No. 96. This decision was the outcome of a long process of consultations and preparation, resulting in the work of the Committee on Private Employment Agencies at the session of the Conference in 1994. After examining the matter in depth, the Committee unanimously opted for the revision of Convention No. 96. Its report bears witness to the very many aspects which must be taken into account to improve the functioning of the labour market.[2] The Committee stressed the need for an adequate protection of workers on increasingly complex labour markets. But it also insisted on the importance of an appropriate institutional framework to improve the functioning of these markets.

A vast majority of Government, Employers' and Workers' members on the Committee on Private Employment Agencies acknowledged the usefulness of a Convention concerning these agencies to protect jobseekers and workers in general. Although they agreed that the functioning of labour markets should be more efficient, they pointed out abuses committed in some cases, as well as the precarious situation of many jobseekers. They felt it was necessary to draw a distinction between the functioning of mechanisms matching supply and demand and the results of this process which were far from perfect, in view of the present world crisis in employment. The functioning of labour markets did little to create productive and freely chosen employment to which new jobseekers might aspire. There was a tendency, especially in developing countries, towards the informal sector because of the lack of jobs in the regular economy. Furthermore, some private employment agencies paid scant attention to the protection of workers in their quest for the cheapest labour. These workers were not in a position to assert their rights and were in danger of being treated unfairly.

While a great majority of members on the Committee reiterated the basic principles of worker protection, they also believed that private employment agencies were significant for job promotion. The functioning of labour markets could be made more effective by involving all the productive economic agents. The considerable increase in the number of private employment agencies during the past three decades could, to a great extent, be attributed to their ability to identify and make the most of

new jobs. As the economy became more complex, flexible and appropriate responses were needed. The advantage of private employment agencies lay particularly in the fact that they concentrated their attention on clients' needs. This approach geared to enterprises and jobseekers has contributed to the growth of these agencies which, in turn, has increased competition and been beneficial to the functioning of labour markets. Whilst acknowledging that there were areas in which the public employment services played a leading role, these constituents felt that private agencies could make a positive contribution to the development of labour markets.

There was widespread agreement among the members of the Committee on Private Employment Agencies, at the 81st Session of the Conference in 1994, that the institutional framework of the functioning of labour markets should be overhauled. The increasingly dynamic conditions of labour markets were only one aspect of the matter. The superiority of the market-economy system over state systems, as a model of economic organization, had also had an impact on institutions. Furthermore, the public employment services were faced with budgetary constraints preventing them from expanding to serve an increasingly varied clientele. As a result of all these factors, the monopoly of the public services was no longer felt merely to be an outmoded concept, but also an obstacle to the democratization of the world of work. The challenge facing all the actors on the labour market was to redefine this institutional framework, to which private employment agencies contributed. However, these developments often involved an alteration in the nature of work and the position of the workers within the enterprise which, in turn, created tension in industrial relations and collective bargaining. The Committee sought to identify the major features of a new framework to guarantee adequate protection of workers whilst also encouraging economic efficiency.

By adopting the report of the Committee on Private Employment Agencies, the Conference endorsed the Committee's conclusions that the ILO should revise Convention No. 96.

It was the Committee's view that the revised standard should pursue the following objectives:

— set the pattern for response to the dynamics of changing labour-market functions and recall the role of its actors;

— draw up general parameters to describe the main actors, namely, the public employment services and private employment agencies, as well as the nature of the relationship both between themselves and with their clients;

— establish general principles and provide guidance that protect: (i) labour markets against poor and unethical practices; (ii) workers' interests, including whether the stability of industrial relations systems might be affected by some practices of private employment agencies (these principles should consider the concerns of some (but not all) Committee members with regard to triangular employment relations, including contract labour, temporary work agencies and staff-leasing arrangements); (iii) workers recruited in one country for work in another;

— create environments that allow for the improved functioning of all employment agencies;

— ensure that national governments be free to determine how the above objectives should be met.

When examining the background of Convention No. 96, it may be seen how ideas have evolved from the principle of state monopoly to a system allowing for a multitude of possibilities.[1] From 1919 onwards, the ILO created international standards to establish the principle of the monopoly on placement and to persuade member States to support it. It argued that since labour was not a commodity, placing workers could not be a commercial transaction. All workers should be informed of placement possibilities within the same deadlines and according to the same procedures; placement was therefore the responsibility of the public service. Private agencies should not be allowed to profit financially from information to which the public did not have access.

Although the Unemployment Convention, 1919 (No. 2), advocated the establishment of free public employment agencies and supervision by the State of private agencies, the ILO came out in favour of monopoly in the Unemployment Recommendation (No. 1), adopted the same year, which supported public measures to prohibit the establishment of private employment agencies.

The Organization's position on this matter later became more tempered. The Employment Agencies Recommendation, 1933 (No. 42), acknowledged that the abolition of fee-paying agencies might involve certain difficulties. Furthermore, the Fee-Charging Employment Agencies Convention, 1933 (No. 34), also provided for an initial three-year period before agencies had to be abolished, during which time no new agencies could be authorized. It nevertheless allowed some exceptions to this provision for specific categories of employment. Finally, the Recommendation encouraged the public offices to follow the example of specialized employment offices for particular occupations. Convention No. 34 is still only in force for five Members.

In 1944, the ILO recalled the principle contained in its Constitution that labour was not a commodity. In the light of major economic and social upheavals after the war, the Conference adopted the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), which made the provisions of the 1933 standard more flexible. This instrument allowed States to choose either the progressive abolition of fee-paying employment agencies or to regulate them. In the first option, the time-limit for abolishing the agencies was no longer mandatory unless public offices offered the same services, and the restriction on opening new agencies was lifted. The second option allowed profit-making public offices and private agencies to operate alongside each other in a country — but under supervision.

From the beginning of the 1960s onwards, the growth of private employment agencies helped to change the attitude that monopoly was the only solution and the possibility of coexistence began to be considered. In particular, the emergence and rapid development of temporary work agencies (TWAs) raised the question of whether these agencies were outside the scope and provisions of Convention No. 96. In 1966 the Director-General and the Committee of Experts expressed the opinion that the TWAs were indeed covered by Convention No. 96. However, in spite of the ILO's position, a number of countries felt that the TWAs were the legal employers of the workers they recruited and not intermediaries; they thus authorized their existence in spite of the restrictions placed on fee-paying placement offices in their countries.

Alongside those countries which believed in the principle of monopoly, a second school of thought emerged in favour of a more liberal approach. A number of countries (Australia, Ireland, Switzerland, United Kingdom, United States) have, from the

beginning of the century, refused to take any position on private employment agencies conducted with a view to profit. They have given them a free rein while keeping them more or less under supervision. The influence of these agencies has been acknowledged and spread to the rest of the world. These countries have a very positive view of the role of private employment agencies.

Finally, there is a third school of thought which believes in maintaining the dynamic aspect of private agencies whilst trying to safeguard the adequate protection of vulnerable workers. This approach, adopted in Germany and Austria for example, has led the countries in question to give up the system of monopoly but introduce specific regulations on the activities of private employment agencies to try and combine the advantages of both systems.

For many years, the Governing Body wondered whether the Conference should examine the matter of TWAs. Meanwhile, the structure of labour markets changed and new types of private employment firms appeared on the scene and spread. Convention No. 96 proved to be increasingly inadequate. Governments had to deal with complaints from trade union organizations denouncing abuses and infringements committed by these agencies. This prompted the ILO to carry out, between 1988 and 1990, a survey in 25 countries to identify and assess the impact of different types of private employment firms. It also noted that the questions raised at the end of the 1960s concerning TWAs also applied to some 15 other kinds of employment agencies which had sprung up during this period.

At the sessions of the Governing Body in November 1991 and November 1992, the ILO proposed that a general discussion, rather than the adoption of a standard, should be envisaged by the Conference. At this point, the controversy surrounding private employment agencies had lasted for more than a half a century. Between 1982 and 1986, the Governing Body had been incapable of taking a decision on TWAs. Furthermore, for ten years, the emergence of new kinds of private employment agencies had increased the risk of even greater contention. In the circumstances, it seemed more reasonable to hold a preliminary discussion to take stock of the situation concerning the private management of employment. If the Conference made objective observations, the adoption of a standard could then be envisaged.

This approach was finally accepted at the 254th Session (November 1992) of the Governing Body, which decided to include a general discussion item on the role of private employment agencies in the functioning of labour markets on the agenda of the 81st Session of the International Labour Conference (1994). The discussions at the 81st Session put an end to the deadlock and it is now possible to envisage an in-depth revision of Convention No. 96.

The decision to include the revision of Convention No. 96 on the agenda of the 85th Session of the Conference marks an important step forward towards the establishment of a more dynamic framework for the functioning of labour markets. Indeed, the work of the Committee on Private Employment Agencies, at the 81st Session of the Conference in 1994, was, in some way, a watershed. In the best possible tradition of tripartism, consensus was reached in favour of a substantial revision of Convention No. 96; it was agreed that the new instrument should not be a mere compromise but constitute a compact body of new principles and practices for a better governance[7] of labour markets. The principle of monopoly covered by the present Convention No. 96 will have no place in the new instrument. Attempts will be made to strike a new balance between the employment services — both public and private —

and to ensure that private employment agencies contribute to the appropriate functioning of the labour market whilst safeguarding the rights of jobseekers and good industrial relations. In so doing, account will be taken of the provisions of the Employment Service Convention, 1948 (No. 88). In view of the need to protect jobseekers against all possible abuses, it is worth recalling other relevant instruments particularly: the Protection of Wages Convention, 1949 (No. 95); the Migration for Employment Convention (Revised), 1949 (No. 97); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Employment Policy Convention, 1964 (No. 122); the Human Resources Development Convention, 1975 (No. 142); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Labour Administration Convention, 1978 (No. 150); the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); the Protection of Workers' Claims (Employers' Insolvency) Convention, 1992 (No. 173).

This report is intended to serve as a basis for discussion at the Conference so that Convention No. 96 might be updated. It marks only one stage in a long process of consultation and attempts to draft a new standard. The report of the Committee on Private Employment Agencies at the 81st Session of the Conference in 1994 made it possible to take stock of the situation. This report takes the work of the Committee as a basis upon which to build for the future. The first chapter examines the contribution of all employment services to the functioning of labour markets. It looks at this functioning in the economic and social context of various countries and considers the definition of an optimal labour market, taking into account the conditions both in industrialized and developing countries — as well as in countries in transition to a market economy. This chapter also reviews the contributions of the various actors in the labour market. Above all, it refers to the role of the public authorities and public employment services in the functioning of the labour market.

Chapter II deals with the relations between public and private employment agencies and examines the definition of private employment agencies — without losing sight of the fact that the very dynamics of future labour markets will make any distinction difficult. Taking into account these developments and future change, it proposes a straightforward typology of private employment agencies. On this basis, it examines the harmonious development of relations between the public and private services — while bearing in mind the comparative advantages of each and of the terms of reference of the public authorities.

Chapter III contains what could be considered the raw material for a revised Convention because it gives an overview of the law and practice in force in some 30 countries. It basically sets out to update the inventory established as a preparation for the work of the Committee at the 81st Session of the Conference. This chapter examines the objectives and scope of regulation. It also looks at the difficulties of application and considers how practices may be improved in ways other than legislation, such as for example codes of ethics.

Chapter IV takes up the subject of the improvement of the governance[3] of labour markets. It examines ways in which all the actors might be encouraged to contribute to the appropriate functioning of labour markets. It also examines how Convention No. 96 might be updated and envisages closer cooperation between private and public employment services. By way of a conclusion to the report, Chapter V summarizes the arguments in favour of a new instrument.

The report ends with a questionnaire to which governments are asked to give substantiated replies. On the basis of information thus received, the Office will draft a second report summarizing the views expressed and pointing out the main points the Conference may wish to consider. It has been found in the past that member States whose law and practice are in conformity with the essential provisions of a Convention are sometimes unable to ratify it because of minor divergencies between its precise terms and their national law and practice. It is important to take account of any such difficulties when drafting the instrument in order to determine whether sufficient flexibility can be incorporated in it without detriment to its substantive effect. The questionnaire accordingly asks member States to indicate any peculiarities of their national law or practice that they believe might create difficulties preventing them from adhering to a universal code and to make specific suggestions as to how these difficulties might be overcome.

In accordance with the provisions of article 38 of the Standing Orders of the Conference, the Office has prepared this report for a single discussion at the Conference, with the intention that it should reach governments not less than 18 months before the opening of the 85th Session of the Conference in 1997. To allow the Office time to examine the replies to the questionnaire and to draft the final report which, in accordance with article 38, paragraph 2, of the Standing Orders must be communicated to the governments not less than four months before the opening of the 85th Session of the Conference, the governments are requested to send their replies to reach the Office no later than 30 June 1996.

In this respect, the Office draws the governments' attention to article 38, paragraph 1, of the Standing Orders of the Conference, under which governments are asked to consult the most representative organizations of employers and workers before finalizing their replies. The results of this consultation should be reflected in the governments' replies and they are asked to indicate which organizations have been so consulted.

Notes

[1] ILO: *Record of proceedings*, International Labour Conference, 81st Session, Geneva, 1994, pp. 21/21-32.

[2] ibid., pp. 21/1-20.

[3] ILO: *The role of private employment agencies in the functioning of labour markets*, International Labour Conference, 81st Session, Geneva, 1994, Report VI, pp. 5-10.

[4] Governance refers to the system determining labour market functioning and policy. This system includes all provisions and legislation regulating, governing and guiding actors on the labour market.

CHAPTER I

THE FUNCTIONING OF LABOUR MARKETS

Although the role played by private employment agencies (PREA) in the functioning of labour markets is significant, it is far from pivotal. There are many ways of finding a job or selecting skilled people. In this area, the work carried out by the public employment services (PES) is still vitally important. It is relevant to recall that at the 81st Session of the International Labour Conference (1994), the Committee on Private Employment Agencies expressed its continuing support for the principles set out in the Employment Services Convention, 1948 (No. 88), and, in particular, the duty of the employment services to ensure, where necessary, in cooperation with other public and private bodies concerned, the best possible organization of the labour market.[1] However, the Committee acknowledged the increasingly important role played by PREA in the various labour markets; but it went even further by highlighting the potential contribution of these agencies in the face of the dual challenges of unemployment and poverty in the world. The report prepared by the Office for discussion by the Committee described the economic role of PREA.[2] A further point raised by constituents during the discussions concerned abuses committed by private employment agencies. The Committee also widened the debate considerably by examining the contributions of the PES and PREA to the economic and social development of the countries concerned.

Private employment agencies could be defined as natural or legal persons, independent of the public administration which, directly or indirectly, participate in the labour market in order to provide an employment service. This definition takes into account the general framework established by the Committee which will be examined in greater detail in Chapter II. The Committee stressed that the aim of PREA was to provide employment services on the labour market. This market was viewed in its widest sense, as a process whereby supply and demand determined the allocation of skills according to the various economic sectors, occupations and regions and set the level of pay. The labour market therefore comprised not only factors influencing the relationship between supply and demand, but also the institutions and abilities of "actors", as well as the outcome of this process. But the Committee also recalled that the ILO strove to convince political leaders to give absolute priority to full productive employment. For this reason both PREA and the PES contributed to the dynamic process of employment which was covered, amongst others, by the Employment Policy Convention, 1964 (No. 122). There should be an active policy to promote full, productive and freely chosen employment; and this should aim at ensuring that there is work for all who are available for and seeking it.[3] As the Committee emphasized, this social objective should be reinforced by national economic and financial policies which set out to achieve long-term economic development. Given the existing problems of unemployment, underemployment, exclusion and absolute poverty, PREA should be able to operate in a wider context.

This chapter examines the environment within which the PES and PREA operate in order to situate better the present and future context of Convention No. 96. An attempt will be made to define more clearly the functioning of labour markets, before turning to the impact of employment and human resource policies. The chapter concludes with a brief survey of the role of national authorities and public employment services in the functioning of labour markets.

The definition of an optimal labour market

Labour is not a commodity. Nevertheless, it is often convenient and useful to refer to the functioning of "labour markets" as the process by which total employment, wages, their distribution across sectors and occupations, and working conditions are determined. Not only employment problems, but also the possibility of obtaining productive work, depend on this mechanism. These are all determined by highly complex interrelationships between societal, family and personal values and beliefs, overall assets and personal decisions, on the one hand; and, by product markets and prices, technology, enterprise organization and behaviour, and employers' expectations, on the other. All of these factors are influenced or constrained by labour market institutions, organizations, regulations and information, as well as by government policies on fiscal, monetary, foreign exchange and trade matters[1] which are more macroeconomic by nature.

The functioning of labour markets is very complex. An analysis of labour market problems should take into account the institutional framework as well as the policies pursued. Amongst the many aspects to be singled out, particular attention should be paid to the allocation of human resources among alternative uses in enterprises, and the distribution of income in terms of wages and salaries as remuneration for workers, an incentive to work and a cost to the employer. This is obviously a very narrow view of the functions of the labour market which not only distributes income, but also provides a margin of security in daily life, social contacts and social recognition for workers. Allocation of resources may also be modified, in view of selection for certain types of employment. Employers use the labour market as a means of recruiting skilled workers in a situation where information is often sorely lacking.

These labour market processes not only concern production and income but also determine whether productive forces remain untapped and affect poverty. The labour market is of capital importance not only for the training of human resources but also for their distribution and use. However, this market is equally very important for all those who are excluded from it. Poverty and exclusion are often directly linked to limitations placed on productive labour. Because of this, many human resources are missing from production and those affected have no source of income. The functioning of a labour market should first and foremost be evaluated in terms of its impact on economic and social life as a whole.

The effects of the functioning of labour markets

Since the early 1990s, employment policies have been at the centre of most countries' debates. Not since the Great Depression of the 1930s has so much research been carried out to find the key to problems such as unemployment, exclusion and poverty. Many advocate using economic growth and trade as a catalyst for the

economic process without worrying too much about the immediate social fallout that this process implies. Others undoubtedly want national economic policies to contribute to employment, but they emphasize social entitlements and institutional aspects as a way out of the crisis. To try to understand better the world employment situation, the 1995 ILO report addressed the issue from the standpoint of globalization.[4] This is not the place to go back over the points which were so ably summarized in that report. Just and lasting solutions to the problems of unemployment and poverty can only be found through international cooperation; and it is only through this cooperation that national well-balanced strategies may have an effect on disadvantaged groups and create a favourable climate for economic growth. Still other observers, such as the World Bank, have emphasized the need for harmonization of employment policies with labour market institutions, which would make for greater flexibility in the economic system.[5] Industrialized countries are trying to rise to the challenge of employment by emphasizing moderation in the area of wages, and reintegration of the unemployed by what are known as "active" measures in the labour market. All these analyses are crucial to the debates on the scourges of unemployment, underemployment and poverty.[6] Technological progress gives rise to significant changes in labour markets. Innovations in communications and computerization directly influence supply and demand for skills. These same technologies facilitate greater productivity in services; but the indirect consequences are even more significant as they imply globalization, with all the repercussions on trade, competition and economic integration this brings in its wake. These same technological advances have contributed to the democratization and the opening up of the market economy. The consequences of all these changes for the functioning of labour markets are difficult to predict, but it is certain that this functioning has become more complex than ever before.

It is relevant to recall that the upsurge of workers searching for productive and freely chosen employment is without precedent. These jobseekers are not only the unemployed, although long-term unemployment obviously remains a serious problem in most industrialized countries. What is particularly worrying is the increase in the number of young people entering the labour markets of poor countries.

There is a marked increase in young workers, particularly in Africa. Yet there are countries, notably in Eastern Europe, where the active population is decreasing. This poses particular problems for the labour markets of transition economies. This situation is compounded by the lack of productive employment. Despite the difficulties some OECD countries' labour markets are experiencing, it is worth noting that in 20 years sub-Saharan Africa will need to find three times more new jobs than the OECD and Eastern Europe combined.[8]

Any contribution the PES and PREA might make towards solving the problems of unemployment in the world will be necessarily limited. It could, however, be significant if it were integrated into an overall policy based on employment, as recommended in the ILO *World Employment Report*. But, to do so, there must be a greater understanding of labour markets and more transparency in analysing their problems. The Programme of Action of the Copenhagen World Summit for Social Development noted that there are more than 120 million workers officially unemployed. More than 1 billion people live in conditions of absolute poverty. What these statistics conceal is not well understood. Even official information is often incomplete and contradictory as can be seen from table 2.

Table 1. Active population — Average annual growth (%)

	1970-80	1980-92	1992-2000
All economies	2.1	1.9	1.7
Industrialized countries	1.3	0.6	0.4
Sub-Saharan Africa	2.4	2.5	2.7
Middle East and North Africa	3.0	3.2	3.2
East Asia and Pacific	2.4	2.1	1.8
South Asia	1.8	2.1	1.9
Latin America and Caribbean	3.1	2.5	2.3
Europe and Central Asia	1.4	1.1	0.2

Source: World Bank, *World Development Report 1994*.

Table 2. Comparison of alternative measures of unemployment in selected countries (in thousands)

Country (date)	Survey un-employment	Registered unemployed	Difference
France (March 1994)	3 115	3 327	208
United Kingdom (spring 1994)	2 650	2 620	30
Indonesia (1991)	2 032	1 042	990
Russia (1993)	3 955	780	3 175
Turkey (1993)	1 659	618	1 041

Source: ILO, *World Labour Report 1995*, p. 19.

It seems, for example, that in numerous developing countries many young people are falling through the employment statistics net. They do not attend school, nor are they part of the active population. The PES have never been in a position to take up the gauntlet of unemployment and exclusion. PREA have only just begun to penetrate the labour markets of impoverished countries. Their contribution to labour market problems in poor countries calls for a completely different type of governance.

This obviously does not mean that there are no PREA in developing countries; indeed, they might even play a greater role than the public employment services. Unfortunately, there are often more abuses committed here than in industrialized countries. The recruitment of migrant workers, particularly in Asia, for employment in the Middle East and high-income countries such as Japan or Singapore, is in the hands of PREA.[9] In the Philippines, for example, there are 700 PREA which deal, on the average, with 2,000 new files a day. Most agencies work in a specific industry or sector. Almost half of them deal exclusively with women's employment as domestic workers or entertainers. The Philippines has a well-established system for supervising these PREA and protecting workers. However, even under these circumstances, it is normal for workers to pay to find a job. If workers go to an unrecognized agency, they run the risk of paying four times the amount. If they cannot afford this they may turn to moneylenders who often charge exorbitant rates for their "loans" and only extend these on the basis of security, endangering the house or other possessions of disadvantaged groups.[10] There should also be greater awareness of the many abuses

Table 3. Labour force, employment and unemployment in selected transition countries, 1989-94

Variation between 1989 and 1994 (a)	Czech Republic		Slovakia		Poland		Hungary	
	Absolute	Per cent	Absolute	Per cent	Absolute	Per cent	Absolute	Per cent
Labour force	– 454	7.9	– 194	– 7.2	1 386	– 7.5	– 1 054	– 19.2
Labour force of active age	– 180	– 3.5	– 45	– 1.8	– 698	– 4.1		
Labour force of post-active age	273	– 52.7	– 148	– 76.4	– 666	– 46.3		
Employment	– 657	11.5	– 527	– 19.6	– 4 087	– 22.2	– 1 513	– 27.7
Unemployment (ILO definition)	204		332		2 701		457	
Labour productivity		7.7		– 2.6		14.2		8.6
Levels	1989 End year	1993/94 Winter	1989 End year	1994 Q1	1989 End year	1994 Q1	1989 End year	1994 Q1
Participation rate	70.3	63.5	68.2	63.1	65.3	60.9	66.7	57.1
Participation rate, active age	86.5	81.4	82.4	80.7	72.3	71.1	85.0	
Participation rate, post-active age	24.5	11.6	5.0	5.0	30.4	15.2	18.9	
Unemployment rate	0.0	3.6	13.4	13.4	0.1	15.9	0.4	10.9

(a) Data for 1989 and 1994 are not totally comparable. Data for 1989 refer to regular statistical yearbook series; – bis data for 1994 originate from labour force sample surveys. – Men aged 15-59, women aged 15-54. For Poland, men aged 15-64, women aged 15-59.

Source: ILO: *World Employment 1995*, p. 110.

which migrant workers face in the host countries.[11] Migration is an important source of income for many poor countries. This has become a key area for PREA. Given the weakness of the PES in these countries, and the abuses to which workers are subject, the situation of PREA which specialize in finding work abroad deserves special attention.

Indeed, these particular private employment agencies illustrate the functioning of labour markets in a context which is scarcely propitious to economic and social development. Many of these PREA do not overstep their legal boundaries and contribute to national development. However, a disturbing number of them, often not widely known, exploit both workers and the countries involved, including the host countries. There are similar situations in countries undergoing structural change.

Wherever labour markets are still in their infancy, there is the risk that labour becomes a commodity. Transition countries, particularly those in Eastern Europe, find it difficult to have control over PREA which specialize in exporting labour towards the West. This is not surprising, given that these countries have just begun developing market economy infrastructures. Furthermore their integration into a world economy, itself undergoing massive changes, is not without its difficulties. The pursuit of market flexibility and the effect of shock therapy breeds significant unemployment. Social safety nets, a euphemism which reveals the divisions in society, are no barrier against poverty.[12] In such situations, PREA can be useful mechanisms for productive economic activity. Unfortunately transition towards a market economy also opens the door to the worst of excesses.[13]

Table 4. Structure of world employment, 1965 and 1989-91

	Agriculture		Industry		Services	
	1965	1989-91	1965	1989-91	1965	1989-91
World	57	48	19	17	24	35
Industrialized countries	22	7	37	26	41	67
Developing countries	72	61	11	14	17	25
East and South-East Asia[1]	73	50	9	18	18	32
Sub-Saharan Africa	79	67	8	9	13	24

[1] Figures for 1965 instead of 1989; industry includes only manufacturing.

Source: ILO: *World Employment 1995*, p. 20.

By taking the active population as a basic reference when analysing the functioning of labour markets, it has been possible to pinpoint the difficulties encountered by public authorities and the PES. The situation is entirely different with PREA which are more directly affected by changes in the economic structure and frequent alterations in the pattern of employment. This is especially the case in countries where there has been — or still is — a transfer of activities from the primary sector to the secondary and tertiary sectors.

Many studies have been written on the structural problems facing many "post-industrial" countries.[14] As far as PREA are concerned, they have contributed to the rapid growth in the manufacturing and service industry. Indeed, they have played a significant role in many countries in bringing about this structural change and have responded to the challenges of the labour market. In the process, PREA have flourished. The reasons for this growth were examined in the ILO report prepared for the 81st Session of the 1994 Conference.[15] Fourteen factors were identified as being at the root of the rapid development of PREA, many of which are linked to globalization and technological progress. Their growth may also be linked to structural change in the world economy.

International trade is increasingly made up of manufactures, including those from developing countries. Competition will force enterprises to innovate and to pursue more efficient methods of production. This will lead to the search for greater flexibility, often with recourse to the subcontracting of certain activities or cooperation with other enterprises in specific areas such as research. But for these enterprises, PREA — and in particular temporary work agencies (TWA) — can be an asset in their competitiveness. The same considerations apply increasingly to the services sector, where measures are often taken to try and attain greater internal flexibility by making organizational changes. There is no doubt that technological innovations will have long-term consequences on employment in the services sector, including public administration. It is therefore expected that the market for PREA will continue to expand.

It is difficult to define the real or potential markets for PREA. A recent study on OECD countries and temporary employment reveals the following information.[16]

In this study of industrialized countries, temporary employment includes fixed-term contracts as well as those concluded with TWA. On the whole, these contracts generally account for a limited percentage of employment; but the situation

Table 5. Manufactures as a percentage of total exports, 1970-90

	1970	1980	1990
World	60.9	64.2	71.1
Developed countries	72.0	70.9	78.0
Eastern Europe	59.1	50.2	43.9
Developing countries	18.5	18.5	53.9
Asia	28.4	23.5	65.5
South and South East Asia	43.4	51.0	77.7
Latin America	10.6	14.7	30.8
Africa	7.0	4.0	15.1

Corresponding figure for sub-Saharan Africa (excluding Nigeria) is 1.1 per cent. If only the seven African countries (Cameroon, Côte d'Ivoire, Kenya, Mauritius, Nigeria, Zambia and Zimbabwe) which exported in excess of 30% of total manufacturing exports

Source: ILO, *World Employment 1995*, p. 113.

Table 6. Permanent and temporary employment (growth rate 1983-91)

	1983-87		1987-91		Change	
	Permanent	Temporary	Permanent	Temporary	Permanent	Temporary
Australia			16.5	12.0	1.4	1.1
Belgium	0.8	29.3	5.0	23.7	6.3	5.4
Denmark	2.6	1.5	8.6	14.3	1.7	20.1
France	1.7	35.4	0.2	84.5	0.5	21.3
Germany			5.3	16.9	9.6	8.5
Greece			9.2	19.4	5.1	14.4
Ireland	5.6	70.6	1.8	22.4	5.9	14.1
Italy	2.3	45.2	1.0	58.9	5.5	12.0
Japan	2.8	3.8				
Luxembourg	4.1	25.0	4.0	66.7	6.1	10.0
Netherlands	1.9	33.2	17.3	35.4	8.1	3.5
Portugal			4.8	39.9	8.3	6.2
Spain			2.7	89.8	1.4	29.4
United Kingdom	1.7	8.8	7.3	1.1	0.6	1.7

Source: E. Dehen, 'Regional employment: An international perspective', *Centre for Urban and Regional Development Studies*, Groningen, Netherlands, 1995.

varies considerably from country to country. Temporary labour is widespread in Spain and expanding rapidly. But in other countries, such as Portugal, where it is also common, it is apparently on the decline. In the area of temporary employment it is important to make a distinction between direct employment by an employer and employment found through PREA. Generally speaking PREA only seem to cover a limited share of the total supply of temporary employment. However, this percentage is much higher than the average in the United Kingdom and the Netherlands. As regards the functioning of labour markets in OECD countries, there are considerable differences in growth rates for permanent and temporary employment. In many

Table 7. Real earnings in manufacturing

Region	Years	Average annual rate of growth (percentage)
Sub-Saharan Africa[1]	1975-80	– 0.6
	1980-88	– 12.3
Latin America and the Caribbean[2]	1971-80	– 2.13
	1981-92	– 3.13
East and South-East Asia[3]	1971-80	5.32
	1981-90	5.12
South Asia[4]		Index of manufacturing real earnings per employee (1987 = 100)
	1971	86.2
	1980	87.4
	1985	91.5

[1] Real annual earnings per employee in manufacturing, 1987 $. Source: World Bank: *African development indicators*, Washington, DC, 1992. [2] Source: UNIDO: *Industrial statistics database* (Vienna, 1994). [3] Comprises Indonesia, Republic of Korea, Malaysia, Philippines and Thailand. Source: UNIDO, op. cit. [4] Comprises Bangladesh, India, Pakistan, Sri Lanka. Source: UNIDO, op. cit.

Source: ILO: *World Employment 1995*, p. 64.

countries (Ireland, Luxembourg, the Netherlands, Germany) half the number of new jobs during the 1980s were filled by persons on a temporary contract. In the United States temporary employment also contributes considerably to job creation.

The effects of the functioning of labour markets on wages is another aspect which should be taken into consideration when attempting to create a favourable environment for the PES and PREA. This is an area where figures are sorely lacking.

The earnings of temporary workers in Europe, Japan and the United States are generally lower than those of permanent workers. However, when analysing data on these earnings, account should be taken of the specific activities and occupations for which non-permanent staff are hired. The situation is probably not very different in other countries. But these discrepancies in earnings must be viewed in the light of overall wage trends. In the 1980s, earnings in industry did not increase much, as shown in table 7. It should be pointed out that the differences in this area between industrialized countries are significant. This is particularly the case for the United States and Europe. Unfortunately, there is insufficient data to measure the influence of PREA on workers' income. And there is no clear picture as to the costs and benefits of temporary labour for employers.[17] This is probably due to the fact that studies carried out in this area often only deal with specific cases in industrialized countries.

If only the functions of allocating skills and distribution of income are taken into account, it might be concluded that the labour markets work poorly. Human resources are wasted through unemployment and underemployment. Poverty is on the increase and exclusion is becoming widespread, even in industrialized countries.

From this standpoint of the functioning of labour markets, economic growth is crucial to solving unemployment. However, most industrialized countries will not be able to master this scourge with traditional economic policies. Some regions, in particular East Asia, will have better success. But all countries will find it difficult to attain lasting economic growth while ensuring an increase in productive employment

Table 8. Forecasts of unemployment rates in the year 2000 (assuming that economic policies remain unchanged) and of growth required to reach a 5 per cent unemployment rate in the year 2000

Country	GDP	Productivity	Employment	Active population	Unemployment rate in 2000	Required growth	Unemployment rate in 1995
United States	2.2	1.1	1.1	1.1	5.8	2.6	5.8
Japan	3.3	2.7	0.6	0.6	2.8	2.4	2.8
Germany	3.0	2.5	0.5	0.1	8.2	4.4	10.0
France	2.2	2.1	0.1	0.5	14.0	6.2	12.2
Italy	1.9	2.0	−0.1	0.2	13.2	5.6	11.9
United Kingdom	2.2	1.9	0.3	0.4	9.4	4.1	8.2
Spain	3.0	2.0	1.0	0.8	23.7	12.2	24.4
Portugal	3.0	2.1	0.9	0.6	5.5	3.2	6.9
Greece	2.5	1.4	1.1	0.2	6.9	3.4	11.0
Netherlands	2.0	1.2	0.8	0.2	6.8	2.8	9.5
Denmark	2.0	1.7	0.3	−0.2	8.2	3.4	10.5
Ireland	2.0	1.8	0.2	0.8	17.9	8.0	15.4
Belgium	2.0	1.8	0.2	0.0	11.8	5.1	12.7
Sweden	2.0	1.9	0.1	0.2	8.3	3.4	7.8
Norway	2.0	1.8	0.2	0.4	6.1	2.5	5.2
Switzerland	2.0	1.3	0.7	0.2	1.3	0.5	3.8
Finland	1.0	1.0	0.0	0.0	17.7	6.9	17.7
Austria	2.0	1.3	0.7	0.0	1.2	0.5	4.6
Iceland	2.0	1.0	1.0	0.8	5.3	2.1	6.2
Canada	2.0	1.0	1.0	1.3	11.5	4.9	10.2
Australia	2.0	0.9	1.1	1.6	11.7	5.0	9.5
New Zealand	2.0	1.5	0.5	0.8	9.5	4.0	8.1

[1] The average rate of growth forecast between 1995 and 2000 (source: OECD, 1995). [2] Source: EUROSTAT projections. [3] Source: OECD, *Jobs Study* (Paris, 1994).

Source: ILO, *World Employment 1995*, p. 160.

and maintaining social progress. The contributions of the PES and PREA in improving the functioning of labour markets will continue to be limited. One thing is clear: the status quo will not improve unemployment, exclusion and poverty. The traditional framework of the functioning of labour markets should thus be enlarged.

The framework for the functioning of labour markets

Full employment is not only the primary objective for development; it is also a prerequisite for the stability of nations and social peace. One of the vital aspects of democratization is that as many workers as possible should participate in the production of goods and services. From the economic point of view, an increase in output through an effective harnessing of human resources leads, in optimal conditions, to growth in the domestic product. This growth is not only contingent upon a simple increase in the number of workers. More than ever, it is linked to the growth

in productivity. This is the key element in employment, labour and the functioning of the market.

Labour market policies should incorporate the management of human resources into classic economic models. Institutions should support social progress. In a theoretical model of labour markets, supply and demand would match large numbers of employers and workers. In this scenario, these labour market actors would be well-informed; and the market's invisible hand would guide this process towards a satisfying conclusion for everyone. The major problem would, therefore, be the level of remuneration. In this simplistic world view the PES and PREA would not need to exist. There would be no problems of unemployment, poverty and exclusion. The very existence of these problems indicates that labour markets are far from being perfect. Their flaws result in an underutilization of human resources, distortions in wages and income and a reduction in potential growth. Trade does not take place between equal partners. There are monopolies and other problems which often inhibit the satisfactory operation of supply and demand. In particular, employers and workers have only very limited information on the functioning of the labour market.

In order for the market to match workers' skills and preferences with the requirements of job offers, it needs to provide information. In reality, this information is mostly lacking and where it exists it is very limited — and then it is very vague. Many people search fruitlessly for a job and this lost time takes its toll not only in terms of significant social cost but also of individual earnings. Jobseekers are at a disadvantage when it comes to being informed about the labour market situation, as well as about all its possibilities and requirements. Most people search for employment in a specific market, more often than not a local one. Even then, they are hard set to obtain information on jobs, vacancies, wages and working conditions. Employers frequently lack accurate information on available skills and what they are worth. In theory, the PES are well-placed to act as information exchange centres but they are rarely equal to this task.

One of the difficulties in developing a good labour market information system is that this information is public property which makes it difficult to allocate the costs equitably. A generalized information system is difficult to set up: it is rarely cost-worthy for a private agency to provide this service which is an essentially public one. The actors on the labour market have a personal interest in keeping strategic information to themselves. This is a particularly important point for PREA. They consider information the basic element of their ability and expertise. Information on job vacancies is a strategic asset for them. Cooperation between the PES and PREA often includes posting information on job vacancies in each other's offices. But this is not the sum total of information. Many PREA consider it, strategically speaking, least costly to provide information on placements than on jobs available. However, these two types of information are equally important for transparency in the local labour market.

Information aids labour market transparency by placing actors in these markets on an equal footing. It also helps match supply and demand. Indeed, the process of matching demand with skills can be costly if there is no harmonization of requirements and information. The dynamic conditions of the labour market favour competition between employers and workers; and the fluidity of the market depends on the state of this competition. The quicker a worker is matched up with a job, the lower the transaction cost. Information helps to match worker to employment, but

transparency is also aided by clearly defined rules of which everybody is aware. However, in matching supply and demand there may be abuses or an imbalance between market forces. What is most important is that services to clients should be carried out in an efficient and fair environment. And an adequate regulation of the labour market tries to improve these services at a minimum economic and social cost.

In principle, economic incentives smooth the process of matching the supply of jobs to jobseekers and therefore make it more efficient. This assumes workers are highly mobile and enterprises flexible. In reality, the labour force, although mobile, is linked to a captive market. Worker mobility, whether regional, sectoral or professional, has its price. This price is offset by a worker's willingness to be compensated by economic and financial incentives. Nevertheless, this mobility can become extreme and upset the balance of labour markets. This is particularly the case in developing countries. Skilled workers in these countries are rare and employers, whether public or private, compete with one another to lure them into their enterprise — leading to a significant turnover in staff. This rotation of skilled workers has negative social effects, in particular when society has borne the cost of training them. It should be pointed out that, in developing countries, this particular lack of cohesion characterizes the functioning of the labour market. Economic incentives are not always enough to gain an optimal result. The functioning of labour markets needs to be regulated by specific measures designed to increase mobility and restore equilibrium.

One of the areas in which information is lacking is that of predicting future situations of supply and demand. This problem has always existed for students who, in most cases, have had to choose training or employment on the basis of highly unreliable information. Furthermore, the standards concerning the organization of employment services, and particularly Recommendation No. 83, emphasize the importance of information on the future labour market. However, the technological revolution taking place today has made students' choices not only more difficult but also more costly. Today's young people will probably change jobs many times during their working life. Each training period should be made profitable within the shortest possible time. It is in the interests of these young people, as well as society, that decisions are made using all available information. Cooperation between the PES and PREA can help minimize private and social costs in this area.

The ILO, employment and labour markets

It is impossible to define an optimal labour market without referring to rules which have been established to deal with shortcomings in these markets. Of course, these rules can have harmful repercussions and the tendency now is for deregulation. Nevertheless, it is useful to recall that in most cases these rules are necessary to counter lack of information and inequality of market rules. International labour standards in this area are a general expression of this need which has already been felt at a national level. Furthermore, since 1919 it has been emphasized that the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve conditions in their own countries. ILO standards have therefore arisen through the fear of social repercussions of international competition. It should also be noted that these standards are expressly aimed at better regulating

international markets which is particularly important for labour mobility between countries. Immigrants are more vulnerable to abuse and, in their case, the principles of a transparent and fair labour market are sorely lacking.

Standards dealing with employment and labour markets contribute directly to overall aims envisaged by international labour law. Universal and lasting peace can be established only if it is based upon social justice. This observation, inscribed in the ILO Constitution of 1919, is still valid today. The idea of protecting workers against abuses, including those caused by the functioning of labour markets, is based on social justice. Since 1919, there have been standards, including those for recruiting and placement of workers, which have made this protection real. The Declaration of Philadelphia widened the scope of this action in addressing the needs of all and not only workers. The International Labour Conference subsequently adopted Conventions concerning, for example, migrant workers (Conventions Nos. 97 and 143), discrimination in employment (Convention No. 111), vocational rehabilitation and employment of disabled persons (Convention No. 159), indigenous and tribal peoples (Convention No. 169) and human resources development (Convention No. 142). All these Conventions concern access to employment and the protection of workers. It is for this reason that the majority of Conventions and Recommendations, as well as the many other provisions which make up the whole of the International Labour Code in its widest sense, have an effect on the direction an optimal labour market might take.

The ILO, it should be stressed, believes that basic human rights must be respected when regulating the labour market. This particularly applies to freedom of association. During discussions at the 81st Session of the Conference in 1994, the social partners affirmed their loyalty to and support for industrial relations and collective bargaining. This perspective is very important for the functioning of labour markets because it encompasses the relationship between supply and demand. The Workers' group was the most explicit in this area indicating that it hoped the revision of Convention No. 96 would take into account universally applicable guidelines which "should promote a stable framework for industrial relations, protection of workers' rights, productive employment for both workers and the unemployed as well as the promotion and protection of collective bargaining relationships". It should be noted that, in the same paragraph, the Workers recommend that: "This should include the following principles: no charging of fees for the services of public employment agencies and no charging of fees for the services of private employment agencies; prevention of discriminatory practices; protection of the privacy of information; transparency of labour market operations; transfer of information pertaining to the matching of functions and definition of the functions and legal status of private employment agencies."[18]

It was only in 1964 that standards were set to place employment promotion in a wider economic context. The Convention and Recommendation (No. 122) on employment policy clearly state that an active policy designed to promote full, productive and freely chosen employment is necessary to stimulate economic growth and development, raise levels of living, meet manpower requirements and overcome unemployment and underemployment. These standards set forth the general principles of employment policy and specify the measures to be taken. They have been consolidated by the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and the Employment Promotion and Protection

against Unemployment Convention, 1988 (No. 168). The Human Resources Development Convention, 1975 (No. 142), and its accompanying Recommendation (No. 150), establish a narrow relationship between vocational guidance, vocational training and employment.[19] The most recent instruments specify that employment services, training and vocational guidance are some of the ways in which employment can be promoted. Similarly, in the discussions on PREA, it should be emphasized that the question of international migration is dealt with in the Recommendation on employment policy. Host countries and countries of origin are invited to take the appropriate measures to prevent abuses in recruiting and using migrant workers. These countries are reminded that they should ensure the full exercise of the rights to freedom of association and to organize and bargain collectively. Employment and labour conditions are an integral part of specific Conventions on migrants (Conventions Nos. 97 and 143).

Many other standards contribute to a better organization of the labour market and an improvement in the quality of its services. Prominent among these are instruments on employment services and vocational guidance and training. There are also standards relating to the development of human resources which have an influence on the functioning of labour markets. For example, a discussion during the 78th Session of the Conference (1991) highlighted the close relationship between employment and training. The contribution of vocational guidance and training is very important for labour force mobility. However, many countries have emphasized that these activities and other operations on the labour market are affected by a lack of information and organization.[20]

Labour market policies and actors

The concept of an "active" employment policy was widely adopted by ILO constituents and often referred to during discussions preceding the adoption of Convention No. 122 in 1964. More recently, the Employment Promotion and Protection Against Unemployment Convention, 1988 (No. 168) stressed the need to encourage freely chosen and productive employment by all appropriate means — which should include employment services. The OECD has tried very hard to define "active" and "passive" labour market measures and make people aware of the difference. Some believe that the expression originated in Scandinavian countries where "active" intervention by public authorities in the labour market has been part of economic policy for more than 50 years. The priorities of active employment policies have often changed. Whatever its origin and regardless of its scope, there are some who believe today that the concept of an active labour market policy applies only to industrialized countries. In order to clarify this situation the Governing Body Committee on Employment and Social Policy has examined active labour market policies in a wider policy context.[21]

The socio-economic aims of a labour market policy

Labour markets should be evaluated according to how they perform their functions. For the ILO, labour markets should contribute to the following objectives:

— *efficiency*, meaning maximum returns on human resources, maximum output and maximum income, corresponding to economists' criteria for judging the allocation function of labour markets;

— *equity*, meaning equality of opportunity for all in access to jobs and training, equal treatment at work, and equal pay for work of equal value — a concept which contributes to a more equitable distribution of income;

— *growth*, meaning that labour market operations today should contribute to, and not impede, higher productivity and incomes and improved employment in the future;

— *social justice*, meaning that, since labour markets may have positive or negative effects on workers' welfare, society should act to minimize negative results and redress the harm done when they occur.[2]

Three factors — international labour standards, tripartism, and the diversity of conditions in member countries — determine the ILO framework for active labour market policies (ALMP). The ILO's objectives for ALMP must explicitly include all four objectives noted above: efficiency, equity, growth and social justice. This implies a shift from passive to active measures to improve labour markets' capacity to accommodate structural change, stressing in particular labour market flexibility. However, while the ability to adapt to structural change is desirable in all countries, many ILO member States are more concerned about underdevelopment and economy-wide underutilization of human capital and labour. The ILO therefore considers the primary objective of ALMP is to strengthen the economic and productive aspects of employment; these policies should extend beyond government programmes requiring government expenditure, which differs somewhat from the OECD concept. Otherwise, ALMP would be difficult to implement if not irrelevant in some developing countries, where government revenues are low and there is increasing pressure to further reduce expenditure. Thus, the ILO framework for ALMP must also include facilitative arrangements, non-governmental institutions and, most importantly, the activities of the social partners.

For the ILO, ALMP should be defined as those policies, and the programmes implementing them, which aim to improve the operation and results of labour markets so as to maximize quality employment and minimize unemployment and underemployment, and while so doing improve efficiency, equity, growth and social justice. However, it should be emphasized that ALMP alone cannot allow full employment to be reached. Although they are often based on the Swedish model they are not as well-defined. The Swedish model included broad macroeconomic monetary-fiscal policies aimed at reaching full employment. Another pillar of this model was the "solidaristic" wage policy. Its success attracted the attention of the ILO[3] and other organizations. Paradoxically, when the ALMP began to be seen by many countries as a panacea for growing unemployment, they collapsed in Sweden. In 1990, the country entered into its worst recession in 60 years. Certain structural problems, such as significant inflation, a top-heavy public sector and rigidities in financial sectors made the model vulnerable. These weaknesses were not new but the international climate and economic situation brought them to the forefront. The ALMP were no longer capable of absorbing the increase in unemployment.

The important lessons to learn from the Swedish model seem to be that:

— full employment was reached and maintained over a long period of time, and ALMP played an important role in this;

— ALMP play an important part, but not the only part, in reaching full employment. In every case, labour markets provide a series of results — wages, sectoral, enterprise, and professional employment and labour conditions, etc. These results are acutely affected by external factors such as macroeconomic policy (fiscal and monetary), international policy (trade and protectionism) and policies to do with education and training. Social agreements and other measures concerning labour conditions; for example, a minimum wage, safety and health at work, retirement age, etc., also play a part;

— the use of ALMP and other economic and social policies in tandem could lead to full employment. However, a solid political commitment would be necessary to reach this goal. In Sweden, the consensus is to continue pursuing this goal based on the conviction that labour should not be considered a commodity;

— ALMP should not be used to achieve things which do not fall into their area of competence. In Sweden's case they were specifically orientated towards promoting structural adjustment. This task highlighted the inherent weakness of the whole model. This shows once again that policies should have limited and realistic goals.

The various actors on the labour market

A classic labour market "model" merely implies a large number of employers and individual workers trying to find each other. Other relationships develop from this point. According to some observers, the main actors in the labour market are the employers, trade union organizations, the public authorities and the labour administration. Those who advocate active labour market policies believe that cooperation with non-governmental organizations is important. These include not only the traditional social partners but also more generally all those involved in implementing programmes to help vulnerable groups. Consequently, if this view is adopted, intermediaries other than the PES should be taken into account.

In reality, there are a greater number of partners, given the extreme great diversity and complexity of labour markets. As some members of the Employers' group stressed during the discussions of the Committee on Private Employment Agencies at the 81st Session of the 1994 Conference, PREA have become a significant partner. "Their growth can be attributed to the fact that they know how to find market niches and provide value-added services which are appreciated by enterprises as well as jobseekers. This is particularly the case in times of increased sectoral and industrial specialization."[24] Some members pointed out that the role of private agencies had grown in developing countries where they facilitated the search for higher skills induced by structural adjustment programmes. This shows the extent of PREA breakthrough as actors in the labour markets. The controversy that surrounds them today arises less from the fact of their existence than from their behaviour as a partner in the functioning of these markets, and above all from their relationship with the PES.

The relationship between the various actors

Labour administration remains a privileged actor in the labour market; indeed, it often determines the quality of the relationships between the various partners. International standards which support this are Convention No. 150 and Recommendation No. 158, both of which provide a framework for dialogue and cooperation. The challenge facing labour administrations, as well as all the other actors, is that of setting up new rules for this cooperation. The fact that these actors coexist and complement each other does not exclude them from competing with each other. However, today there is a tendency towards increased competition in almost every area. Technical progress, globalization and democratization are encouraging this competition. In order to improve the functioning of labour markets and prevent any negative consequences they might have, this competition should comply with certain rules. The problem is that the effectiveness of market regulation seems to be decreasing, even though labour markets perhaps respond better to regulation than other markets (such as capital markets) due, in all probability, to the reduced mobility of human resources. Whatever the case, the relationship between the different actors has become less stable and less permanent. Labour administrations, as well as social partners and the other actors, must invest considerably in the quality of their mutual relationships. This institutional aspect is a condition *sine qua non* to improve the functioning of labour markets.

The role of public authorities and public employment services

The functioning of labour markets depends on numerous factors. There are no two markets which function in the same way. Differing socio-economic realities are largely responsible for their diversity; institutions and policies explain the rest. However, the results of these different structures and processes are often fairly similar. This means that we can draw certain conclusions as to the role of public authorities in the functioning of labour markets.

The basic functions of public authorities as regards employment services

No labour market can achieve efficiency, equity, growth and social justice simultaneously and spontaneously. Therefore, the public authorities' first duty is to define their labour market policy. Often governments fail to do so. However, the absence of this policy is in itself a policy. One thing is certain: only the government can define development strategies, programmes for promoting employment, labour market institutions and all those other aspects which go together to make up the framework for the functioning of the labour market.

Secondly, the public authorities and the PES in particular are the only ones who can handle information on national labour markets as a whole. Given the strategic importance of this information, no other organization can assume this role.

A third basic function of public authorities is the management of the financial means put at their disposal by the State and taxpayers to finance and implement support programmes aimed at correcting labour market dysfunctions. Although other organizations or third parties might implement these programmes, the management itself of these funds lies with the central services. The administration of

unemployment benefits and social welfare is another example of a function difficult to remove from government responsibility. This task is often carried out in close collaboration with the social partners. The latter can also be involved in the three basic functions mentioned above. Nevertheless, public authorities remain primarily responsible for these functions in the labour market: they determine policy, they provide a framework in which to follow trends in these markets and they manage public resources. It is in this context that the relationship between the PES and PREA must be considered.

Notes

[1] ILO: *Record of proceedings*, International Labour Conference, 81st Session, Geneva, 1994, pp. 21/23-35.

[2] ILO: *The role of private employment agencies in the functioning of labour markets*, Report VI, International Labour Conference, 81st Session, Geneva, 1994.

[3] ILO: Employment Policy Convention, 1964 (No. 122), Article 1.

[4] ILO: GB.258/ESP/2/5.

[5] ILO: *World Employment 1995* (Geneva, 1995).

[6] World Bank: *Workers in an integrating world. World development report 1995* (Oxford University Press, 1995).

[7] OECD: *Employment Outlook*, July 1995 (Paris, 1995).

[8] D. Turnham: *Employment and development: A new review of evidence* (Paris, OECD, Development Centre Studies, 1993).

[9] P. Stalker: *The work of strangers: A survey of international labour migration* (Geneva, ILO, 1994).

[10] ILO: *Record of proceedings*, op. cit., para. 83.

[11] The ILO, through its programme on migration, has contributed to the documentation of information on various types of abuses, for example, through its "migration clippings" service in collaboration with the UNDP and the Scalabrini Migration Centre.

[12] The work carried out by an ILO multidisciplinary team for Central and Eastern Europe in Budapest shows the extent of the social consequences of the transition process as well as the policies to follow. For Central Asian countries, see P. Ronnas and O. Sjoberg (eds.): *Economic transformation and employment in Central Asia* (ILO, Ankara, Turkey, 1994).

[13] IOM: *Trafficking and prostitution: The growing exploitation of migrant women from Central and Eastern Europe* (Budapest, IOM, 1995).

[14] The ILO has made a decisive contribution to the debate on full employment. See documentation mentioned in *World Employment 1995* as well as publications carried out jointly by the UNDP/ILO on "Economic policies and employment" (1995).

[15] ILO: *The role of private employment agencies in the functioning of labour markets*, op. cit., in particular pp. 24-31.

[16] L. Delsen: *Atypical employment: An international perspective. Causes, consequences and policy* (WoltersgroepGroningen, Netherlands, 1995).

[17] ibid., Ch. 3.5.2.

[18] ILO: *Record of proceedings*, op. cit., para. 84.

[19] The relevance of these Conventions to the functioning of the labour market may be understood by referring to the provisions concerning vocational guidance and labour market information contained in Article 3 of the Human Resources Development Convention, 1975 (No. 142).

[20] ILO: *Human resources development*, Report III (Part 4B), Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 78th Session, 1991.

[21] ILO: GB.258/ESP/2/5, op. cit.

[22] ibid., para. 10.

[23] G. Standing: *Unemployment and labour market flexibility: Sweden* (Geneva, ILO, 1988).

[24] ILO: *Record of proceedings*, op. cit., para. 48.

CHAPTER II

THE RELATIONSHIP BETWEEN PUBLIC AND PRIVATE EMPLOYMENT AGENCIES

While the previous chapter emphasized the functioning of labour markets in the discussion on private employment agencies (PREA), this chapter will now attempt to define the bases and principles of the contribution made by PREA to this process. Unemployment and underemployment are evidence that the functioning of various markets often leaves a great deal to be desired. Moreover, the actual functioning of markets can lead to abuse. There is no question that jobseekers and workers are most often the main victims of such abuses, although the same can happen to employers and even honest, well-intentioned agencies that defend the interests of both employers and jobseekers.[1] PREA and public employment services (PES) can work together to improve this situation. An improved functioning of labour markets contributes to job-creation, increases income and enhances workers' skills. To ensure this, PREA and PES must join forces; how much labour markets improve will depend on the quality of their relations.

Several factors affect the relationship between PREA and PES in various ways. The preceding chapter highlighted the democratic framework and the context of the market economy. Any organization of labour markets represents a political choice; the same holds true for programmes aimed at improving supply and demand, and their interaction. Contributions by workers' and employers' organizations to this framework and functioning are an integral part of this democratic process. Legislation, as will be discussed in Chapter III, is a reflection and support of this structure. However, if relationships between partners and actors in the labour market are unsatisfactory, then there will be no substance or future to this structure. The quality of the relationship between PREA and PES will depend on how these public and private agencies function in the context of monopoly and competition. This relationship is, in turn, determined by the roles assigned to both types of agency by authorities, though the quality of the relationship also depends on the services they provide. At the same time, competition between the two can lead to abuses, which in the long run can prove harmful to their relations. In the best of cases, PREA and PES will achieve a dynamic, complementary equilibrium. Such a situation will ensure the best services at the lowest cost, while minimizing abuses, including those of a monopolistic nature. This chapter is intended to give a clearer definition of these relationships. The first part will define PREA in a broader sense, specifying their characteristics, while the second part will examine their relationships from the standpoint of competitiveness and complementarity as regards services to users.

Defining PREA

The Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), gives the following definition of a fee-charging employment agency:

Article 1

1. For the purpose of this Convention, the expression "fee-charging employment agency" means:

(a) employment agencies conducted with a view to profit, that is to say, any person, company, institution, agency or other organization which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers;

(b) employment agencies not conducted with a view to profit, that is to say, the placing services of any company, institution, agency or other organization which, though not conducted with a view to deriving any pecuniary or other material advantage, levies from either employer or worker for the above services an entrance fee, a periodical contribution or any other charge.

2. This Convention does not apply to the placing of seamen.

An updated definition of PREA

Once it has been acknowledged that any discussion on the revision of Convention No. 96 must centre on ways to improve the functioning of the labour market, it becomes imperative to update the concept of a fee-charging employment agency.

At the 81st Session of the Conference in 1994, the report drafted by the Office for discussion gave a clear idea of the factors to be considered for a more suitable definition. Notwithstanding the nature of services, it was felt important that the idea of a "private" agency should be clarified. Furthermore, the role of PREA in the functioning of labour markets should be defined.

It is relevant to recall that the concept of "private" agencies is based on their legal status; in other words, their activities are governed by private law. It overlooks the source of PREA funding, which may be public or private. Nor does the concept have anything to do with the basic distinction between "with a view to profit" and "not with a view to profit" as given in Convention No. 96.

Also important is the fact that the object of PREA activities is employment, which is the end result of the functioning of the labour market. This is reflected in the conditions described in the preceding chapter. The quality of employment, in particular the fact that it should be both productive and freely chosen, is the concern of standards other than Convention No. 96. But the feature that binds all PREA is that providing employment is their main aim or at least part of their secondary activities.

Taking these considerations into account, the Office had defined PREA as follows:

"Private employment agencies could be defined as service enterprises under private law which undertake, under contract and in exchange for financial compensation (a fee or subsidy), operations on behalf of individual clients or client enterprises with the aim of easing or speeding

up access to employment or career progression or filling a vacancy. This definition includes agencies which undertake to carry out a specific assignment or task for a client enterprise by recruiting appropriate personnel, and companies which, as an alternative to unemployment, employ and train workers in order to make it easier for them to find a job later on."

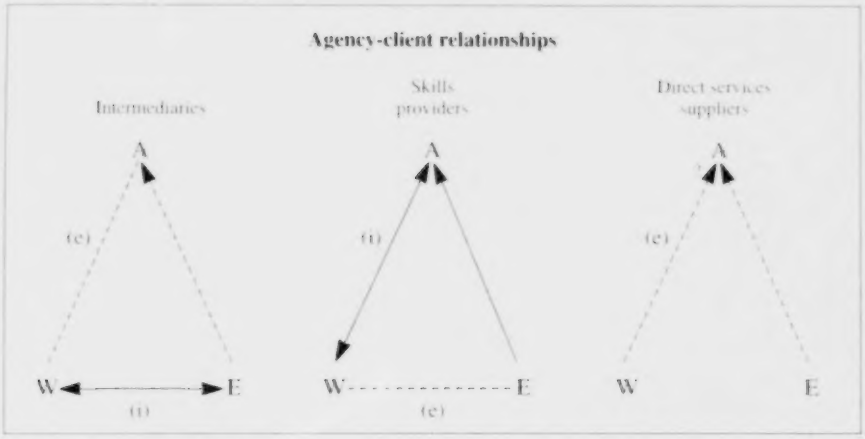
During discussions of the Committee on Private Employment Agencies, it was felt that this definition was both too extensive and too restrictive.[1] The Committee concluded that any subsequent revision of Convention No. 96 should bear in mind specific national conditions. An attempt to incorporate too many aspects into the instrument would run the risk that it would be too far removed from the law and practice in certain countries. However, owing to the dynamic nature of labour markets, too precise a definition could also limit the field of application of Convention No. 96. The Committee therefore proposed a more general definition of PREA: "... private firms directly or indirectly providing a service in the labour market". Recalling the comments made in the preceding chapter on the functioning of labour markets, the following definition is suggested: the expression "private employment agency" refers to any natural or legal person independent of the public administration, which participates in the labour market in order to provide an employment service. In this sense, "any individual or legal person" also includes enterprises, institutions and companies.

Typology of PREA

The type of services rendered by PREA will always be an important criterion in defining these agencies at the national level. With this in mind, the Office prepared a classification containing 16 different types of agency under five categories. Although the Committee viewed this measure as useful, there was a feeling that, as with the definition, it was both too extensive and too restrictive. If Convention No. 96 were to be revised, it would be advisable to seek a more generic approach that would allow it to be adapted to national conditions while remaining flexible enough to cope with the volatile situation of the labour market.

A common factor among the increasingly diversified activities of PREA is the contract linking client and agency. As labour markets become increasingly sophisticated, these contracts will become more official and necessarily be in writing. However, the very nature of these contracts and the identification of clients often make it difficult to distinguish between PREA. It must be borne in mind that the basic objective of PREA in many instances is the signing of an employment contract: this differs from the actual matching of supply and demand — i.e. the bringing together of employer and jobseeker — which must be specified in yet another contract. Many PREA, however, provide services for which there is no contract setting forth mutual responsibilities. For example, the mere providing of free information to jobseekers does not involve a written contract. The very nature of PREA produces triangular relationships which should be clearly specified so as to better understand their contribution to the labour market. This could also help towards a better comprehension of the legal problems arising from temporary employment agencies.

The following three major PREA groups reflect contractual and other types of relationships:



A = Agency; W = Worker; E = Employer.

The objective of every agency is employment. Contracts of employment, with their mutual responsibilities, represent the end result of service activities (a two-headed arrow in the above diagram). Under these contracts, workers are usually protected against abuses (t) by labour legislation or common law. These contracts arise from a relationship (dashed line). In some cases, the employer pays to establish this relationship (dashed arrow). In principle, the worker is protected when services are provided free, though it is uncertain whether such a guarantee is also valid for direct services (arrow with question mark). There are none the less frequent abuses (e) when this relationship is established outside of a contract of employment. Certain agency-employer relationships assume the form of an assignment contract (plain arrow).

An initial group of PREA, the intermediaries, is mainly involved in job placement. The term "intermediary" may be defined as a private employment agency which provides services intended to match supply and demand — without the agency being a party to the employment relationship. The outcome is an employment contract between the worker (W) and the employer (E). Although other types of intermediaries have emerged, their functions are on the same lines as those set forth in Convention No. 96.

Skills providers are characterized by the fact that the agency (A) assumes the role of employer (E). Along with the contract of employment there is also a traditional contract between the agency and the employer. Temporary employment agencies are representative of this type of agency. In a more general sense, a skills provider can be a private employment agency which provides services consisting of recruiting workers who are employees of the agency, with a view to making them available to a natural or legal third-party user who assigns their tasks and supervises the execution of these tasks. Many other operations in the labour market enter into the category.

Direct services are yet another type of operation. In this case, there is no employment contract binding the worker (W) to the agency (A) or employer (E). These services focus on preparing the job supply or demand. Services are rendered,

however, as well as payment for same, often made by the employer (E). A supplier of direct services may be defined as a private employment agency which furnishes services such as training, provision of information or any other employment-related services that are provided without seeking to match specific supply and demand.

The Committee on Private Employment Agencies expressed interest in an updated description of PREA.[1] The above-mentioned proposed classification could serve as a basis for discussions on revising Convention No. 96, making it possible to incorporate PREA activities identified under the proposed ILO typology,[2] as well as those brought up in the Committee's discussions. The advantage of having only three major PREA groups stems from the ease of incorporating other services provided in labour markets, as they arise, into this typology. Bearing in mind the dynamic nature of these markets, any sort of inflexible typology is bound to fail. The creation of three major groups will emphasize PREA inventories rather than their classification. A brief summary of PREA characteristics previously identified by the Office would be helpful.

Intermediaries

Fee-charging employment agencies

Traditional fee-charging employment agencies still remain the most typical example of an intermediary. They are often governed by the provisions of Convention No. 96 as regards taking out a licence (renewable yearly), approval of their scale of client fees, and prohibition of charging the jobseeker a fee. In 1949, these agencies were a reflection of the times. This type of agency acts as an intermediary bringing together vacancies and jobseekers and therefore is not a party to an employment contract.

Unless they are subsidized, these employment agencies charge a fee for their services once the employment contract has been signed between the employer and worker. Others accept fees only to cover their expenses. These agencies may specialize in a specific job market, region, type of worker or economic sector. Some have become nationwide leaders, such as trade union labour exchanges and the labour pool system in some ports.

These agencies compete among themselves and with the public employment service. They also organize into federations to stand up to the legislative, administrative and judicial authorities and trade unions.

Overseas employment agencies

Widespread on the Indian subcontinent and South-East Asia, these agencies specialize in selecting and recruiting national workers for jobs overseas. Some have a branch in the host country to provide follow-up, to protect workers and to seek out vacancies.

These agencies are in principle supervised by the labour administration. They act as employers' representatives and may also sign employment contracts or act as intermediaries. They are paid by the overseas employers and are supposed to charge workers only an initial application fee. There are, however, numerous abuses, especially by illegal agencies.

Recently in Central Europe management consultancy firms have begun to engage in training and job placement in industrialized countries, targeted as technicians and scientists.

Placement of au pair girls or domestic employees abroad may be included in this category.

Agencies for the recruitment and placement of foreigners

These agencies are exactly the reverse of those described above. They select and recruit workers abroad for local employers under manpower agreements between countries and often maintain counterpart branches in the workers' country of origin. Subject to special regulations, they can play on the competition between countries. To improve control over the inflow of workers, Malaysia and certain other countries require prior authorization of the Labour Ministry for the recruitment of each foreign worker. Special attention should be paid to this type of PREA, as well as to the category mentioned above. These agencies provide a service to jobseekers in so far as they promise work abroad. This is an important and constantly expanding market, although it has always been open to abuse. From the standpoint of employment policy, this market has highly specific characteristics, given the readily available supply of manpower.

Executive search agencies

These so-called "headhunters" specialize in seeking out rare talent for strategic posts on behalf of client employers.

The term "executive" may apply to either managerial or consultancy positions as well as to the liberal professions. The high remuneration offered to the candidates may be attributed more to the rarity of their skills than to the position they hold in the enterprise.

Candidates are sought through the initiative of the agency, i.e. through direct contact with candidates or by means of vacancy announcements in the press.

The agency calculates its fee on the basis of time spent searching for the candidate and is paid a percentage of the annual remuneration the candidate will receive. The agency acts as a provider of services to the employer. Such agencies require highly developed and extremely diversified skills, and are organized in national and international federations.

Training and placement institutes

An increasing number of training institutes now offer their graduates job-search and placement services to demonstrate that their training matches the needs of the labour market. This obviously creates competition between them. Sometimes, however, it is the placement offices which provide the training. The payment of these services is often incorporated into the cost of their main activity, be it training or placement.

Skills providers

Temporary work agencies (TWAs)

These agencies are a classic example of the second major PREA category, skills providers. A temporary work agency may be defined as any natural or legal person

who, under national legislation, is qualified to recruit workers who then become its legal employees, with a view to making these workers available to a third-party user who supervises their work and with whom the agency has signed an assignment contract.

TWAs date back to shortly before the adoption of Convention No. 96 and account for the majority of private employment agencies. Their turnover is very high, although the hours of work performed by temporary workers amount to little more than 1 per cent of the total of full-time workers in a single year.

It is widely recognized that TWAs recruit workers and then immediately assign them to enterprises that have signed an assignment contract with them. Thus there is a triangular relationship involving two types of contract: one between the TWA and the worker, and the other between the TWA and the user enterprise. Legally, TWAs are the employer. There are several variations. The workers may have the status of a self-employed person and the TWA may only be an agent acting as a representative of the user enterprise. The TWAs may also build up a team of permanent employees who are then sent on successive assignments with different user enterprises.

In some countries (Germany, the Netherlands), TWAs are prohibited from operating in certain sectors where there is a high risk of abuse. In others (France, Belgium), the occupations open to TWAs are limited. Japan, for instance, has limited the number of occupations in which these agencies may be used to 18.

The TWAs impart an element of flexibility to human resources. First-time jobseekers appreciate them as they provide them with an opportunity to gain a foothold in the labour market at a time when it is difficult to obtain a stable job. And workers have their own reasons for wanting to work with a TWA.[6]

TWAs also provide workers and enterprises with the opportunity of getting to know each other and see how they work. One-third of workers given temporary assignments are eventually recruited for full-time employment by the enterprise. The most advanced TWAs offer training programmes and brief retraining courses, and are capable of testing candidates' aptitudes so as to direct them better. In the United States TWAs take over the areas of enterprises' peripheral activities, such as messenger services, security and maintenance. They are therefore tending towards a form of subcontracting, which differs from the main PREA function.

TWAs include about ten multinational companies, some of which cover up to 40 countries.

Staff leasing agencies

These agencies, which started up in the United States around 1985, cater mainly to small enterprises. Their role is to relieve these enterprises of the burden of personnel management in exchange for a comprehensive fee fixed in advance. From the workers' point of view, the agency is their legal employer, while to the enterprise it is the lessor of this staff.

In the best of cases, these agencies offer state-of-the-art personnel management methods and negotiate advantageous terms for their employees, such as supplementary pension schemes and health insurance. The enterprises themselves also stand to gain from greater stability among their staff.

These agencies can only operate if labour legislation does not prohibit staff leasing without limit as to duration.

Job shops

These enterprises emerged in the late 1980s. Spin-offs of specialized consultancies and services, they consist of several persons with complementary skills who market their services to enterprises for varying lengths of time.

When the needs of an enterprise outpace the skills offered by the consultants, the latter recruit a worker for the duration of the assignment; in other words, they operate as a TWA.

It is difficult to define the status of these job shops and to compare them with traditional employment agencies.

Career management agencies

The role of these agencies is to manage their clients' careers (entertainment and fashion industries, photography and sports).

Their fee consists of an initial fixed sum, plus a percentage of the fees paid to their clients. They act as their clients' representative vis-à-vis employers. Repeated cases of breach of trust have led a number of countries (including France and its modelling agencies, in 1989) to bring their activities under strict control.

Employment enterprises or "intermediary associations"

The main purpose of these enterprises is to train and occupy their staff with a view to their entering employment at a later stage. They are non-profit associations which offer workers temporary employment. Generally speaking, they are private and are often subsidized out of public funds. They have difficult relations with mainstream enterprises which are wary of their competition.

In France, these enterprises employ about 10,000 workers full time; in some other countries, such as China and Germany, they employ a vast number of workers.

Suppliers of direct services

Suppliers of direct services comprise the third and last major category of PREA. Outplacement agencies are a classic example. However, as labour markets grow increasingly complex, along with technological progress, the outlook is that more widely diversified services will emerge. A common element among PREA activities in this category is that not only is there no contract between worker and employer, as in the previous category, but also that there is no matching of supply and demand. In other words, these PREA may cater to either supply or demand.

Outplacement agencies

Outplacement, as defined by a collective agreement in Belgium is "a package of services and consultation provided individually or collectively by an outplacement agency, upon request of and payment by an employer, so that workers may of their own accord and as quickly as possible find employment with a new employer or develop a professional activity on a freelance basis".

In the late seventies, outplacement agencies mainly specialized in helping executives to re-enter the world of employment. Since then, they have begun to turn their attention to workers who have become redundant, or who are threatened with redundancy, as a result of industrial restructuring. These agencies also assist dismissed workers in carrying out a self-evaluation of their skills and in choosing a new occupation.

Although the agencies may have a contract with the outgoing worker's employer, it does not guarantee the worker a new job. Enterprises may offer outplacement services in addition to severance pay. Outplacement services can be collective or individual; in the latter case, the contract is between the worker and the agency.

These agencies also have federations at national and international level.

Job-search consultancies

For purposes of entry or re-entry into the labour market, these agencies assist clients in assessing their aptitudes, prospecting for training opportunities, setting up interviews with potential employers, etc. There are no specific regulations governing these agencies.

Personnel management consultancies

Despite their name, these agencies generally engage only in staff selection and recruitment. The only difference between these agencies and the executive search agencies is the extent to which staff selection and recruitment predominate in their range of activities. These agencies may mask their activities behind misleading company names or titles to avoid the strict control to which private recruitment is subjected.

Employment advertising agencies

These agencies buy newspaper advertising space wholesale in order to use it for vacancy announcement and jobseekers' advertisements. They then sell these spaces to individual advertisers.

An increasing number of these agencies offer interviewing and preselection services for an extra fee. Owing to the growing popularity of these services, these agencies are converting into personnel selection and recruitment agencies.

This activity is not yet subject to specific governmental regulations.

Computerized job database agencies

These agencies specialize in computerized databases of vacancies and candidates, which they make available through vast telecommunication networks. Their fees come from charges levied on users accessing the database. Before long, these agencies will replace those employing traditional methods.

* * *

There will never be a definitive PREA typology. Rapidly changing labour markets are constantly faced with new demands for services, in order to boost workers' performance skills, or simply to meet a sudden rise in production. The PREA are constantly on the look-out for this demand as they seek to gain niches in the market. At the same time, these rapid changes can spur a drive for quick profits outside a particular area of economic activity. Such is the case when TWAs become a contract-labour enterprise. In the context of this report, contract labour could be defined as the recruitment and supply of a contingent of workers to a user enterprise whereby the contractor selects totally or in part the number of workers and their skills, supplies the equipment and supervises the workers.

Contract labour is the extension of traditional job-contracting enterprises. A growing number of agencies are specializing in the recruitment and supply of a contingent of workers assigned to specific tasks for a user enterprise. Unlike TWAs, these agencies outfit, organize and supervise workers at their jobs.

Trade union organizations believe that there is abuse when agencies make workers of all categories available to enterprises, lumping them together in jobs with regular workers who perform the same duties. Both agencies and employers are accused of seeking, under the guise of subcontracting, to cut the labour cost of the user enterprise.

Contract labour will be the subject of first discussion at the 85th Session of the Conference in 1997. It will not be included in the discussions on the revision of Convention No. 96.

Home work represents a situation similar to that of contract labour. Homeworkers often use an intermediary to market the goods and services they produce. There are PREA that operate as manpower suppliers for third-party enterprises. The conditions of this type of work may lead to abuses, particularly among developing countries and in illegal situations. At the same time, this type of work might also expand in the light of technical progress, notably in the area of communications. Home work was the subject of first discussion at the 82nd Session of the Conference in 1995 with a view to the adoption in 1996 of a Convention and Recommendation.[5]

PREA CHARACTERISTICS

The quality of relationships between public and private employment agencies depends on the contribution made by each, and particularly on each one's specific role. The preceding chapter referred to certain essential functions that PES should carry out. If they perform inefficiently, they will undermine their position. Other means of satisfying demand will be sought, thereby straining the relationship between the PES and PREA. The same holds true for contributions by private services. The quality of their relationship with PES is contingent upon the effectiveness of their work.

PREA strong points

The Committee which examined the role of private employment agencies in the functioning of labour markets at the 81st Session of the Conference in 1994 drafted a list of PREA strong points. It concluded that well-functioning PREA could in many instances:[3]

- reduce the time needed to fill vacancies;
- bring vacancies to the surface in the open market;
- sense changes in labour-market requirements and react quickly, avoiding delays and imbalances;
- match supply and demand of skills through relevant selection and recruitment methods, thus saving waste due to avoidable manpower turnover;
- satisfy needs not satisfactorily covered by public agencies due to the growing complexity in demand and supply of skills;
- build a bridge between unemployment and permanent employment by providing, mainly through temporary work assignments, gradual incorporation of jobseekers (especially new entrants or re-entrants) into the labour market;

— multiply the sources of information on job opportunities, thus increasing the overall stock of available information on the job market;

— reduce the time of deployment from one job to the other through outplacement techniques, thus contributing to a better labour force mobility;

— provide short-term employment training, thus contributing to bridge the gap between the supply and demand of skills.

There are many advocates of PREA.[10] The market has come out in favour of these agencies, as witnessed by the growing number of countries which are amending their legislation to include them.

Private agencies respond to a common need among employers and workers, a need which they are able to fulfil with no fear of rejection. Opposition by trade union organizations is by no means unanimous; some have signed collective agreements, particularly with TWAs.

The combined action of private agencies and public employment services leads to a labour market that functions better than if it were in the sole hands of the public service. By maintaining permanent links with their client enterprises, private agencies ensure that a large number of job vacancies are displayed — thus smoothing out the way to employment. Furthermore, job information is better disseminated by multiple sources than by a single organization. The further companies progress along the path of modernization, the greater the justification for the role of private agencies because they are attuned to enterprises' needs and able to meet their requirements.

Growth of PREA

Intermediaries

The development of PREA is evidence that they are operating in response to market demand.[11] Among the oldest agencies, fee-charging employment agencies are relatively modest in size. Indeed, they were the first to engage in private employment management and are tending to evolve toward more specialized types of services. Once they become legal, they naturally tend to consolidate their position in almost all the world's markets. This may involve expanding their activities beyond those of an intermediary as defined above, for example by engaging in temporary employment services.

In the United States, where the authorities are very open to private placement, the agencies are well-established and have shown a marked development. While in 1968 there were only 2,000 agencies, by 1993 the number had risen to 14,000 companies with some 20,000 agencies, with 216,000 employees and a payroll of US$3.9 billion. At the same time, public employment service agencies numbered 1,700, with a budget of around US$1 billion. Estimates for 1995 are that PREA will employ approximately 300,000 persons, although this figure is questioned as it is difficult to define accurately the activities of this type of office. Turnover has remained high since the 1990-92 recession. It should be noted that placement is not one of the leading PREA activities. Although annual earnings in this area have increased on an average of 10 per cent since 1992-93, other areas in which they operate have often increased at an even faster rate in the United States.

In Japan, the status of private employment agencies is indicative of the widespread influence of national employment service policy on the institutional framework and

development of PREA. Both the United States and Japan have very dynamic economies; in Japan, however, there is also a highly developed public system of matching supply and demand. Public services have 479 main offices, along with 152 local secondary offices with an extremely skilled staff of 12,750 persons. Private placement is limited to 29 clearly defined occupations. Despite these constraints, the private sector is well-developed: in March 1994 there were 3,307 profit-making employment offices which helped more than 560,000 jobseekers. For the past ten years, these offices have increased by 8 per cent per year, a rate which has nevertheless slowed down since 1991 owing to economic recession. There were 429 non-profit-making employment offices in 1994. Overseas placement was not authorized until April 1993, and only for three occupations: enterprise management executives, scientific technicians and interpreters. The Japanese press has reported on abuses committed by profit-making employment agencies: these agencies tend to pass off workers from any occupation as if they pertained to one of the 29 authorized categories. There are also problems with fees charged to jobseekers: although this amount should not surpass 5 per cent of annual earnings, they often exceed 30 per cent.[17]

Skills providers

The worldwide market for temporary work registered a turnover of some US$80 billion in 1994; US$35 billion was generated in the United States. In 1992, the International Confederation of Temporary Work Businesses (CIETT) estimated the turnover for TWAs at US$60 billion, and US$20 billion for the United States (US$16 billion of which was spent on paying workers recruited by agencies). The hours of work accounted for by these agencies was equal to 1.5 million full-time jobs per year. The United States provides an interesting case-study because it is possible to trace the development of TWAs back much further and get a clearer picture. These trends serve as a forecast of what will happen elsewhere in the world. In 1970, the turnover of TWAs was US$0.66 billion; by 1992 it had increased thirtyfold. Using 1992 as a reference year, it can be seen that the United States federal and state coffers collected three times more in tax revenue from the profession than they allocated to the public employment services under its current annual budget.

The TWA industry is a good reflection of economic cycles. Generally speaking, temporary employment rises rapidly at the onset of economic expansion, with an unmistakable downturn in times of recession. Since 1992, activities in this sector have flourished in the United States, with annual turnover rising by 20 per cent between 1992 and 1995. Temporary employment as a percentage of total employment is also on the increase (in the United States, for example, it rose from 0.7 per cent in 1985 to 1.5 per cent in 1995). It may well be that by the year 2000 temporary workers will comprise 3 per cent of total employment. But, the composition of the temporary workforce is changing. In the United States there are signs that temporary work is expanding outside traditional occupations, such as secretarial work. There is also a higher percentage of men found among temporary workers — an area where women formerly prevailed. In other industrialized countries, the TWA share of labour markets still varies to a great extent. In some, it has even surpassed that of the United States; in the Netherlands, for example, TWAs represent 2.4 per cent of total employment. Temporary workers in France account for 1.5 per cent of available employment, and in the United Kingdom 1.2 per cent. On the other hand, in Japan this percentage is only

0.4 per cent for 1995, and scarcely higher in Germany (0.5 per cent). Nevertheless, TWA turnover has risen sharply in virtually every industrialized country since 1992.

Multinational enterprises play a very active role in the area of temporary employment. Charting the results of the largest companies in this sector from year to year shows how they are going from strength to strength. At the end of 1992, the largest of them passed the US$4 billion mark, four times the figure for 1982. This enterprise operated in 32 countries, had generated 325 million hours of work and provided employment for 1.2 million people. From 1992 to 1995, this TWA boosted its turnover by 50 per cent, operating in 40 countries. The next largest multinational increased its turnover of US$0.5 billion in 1980 to US$2 billion in 1992. During this time, the number of work-hours for which this enterprise was responsible rose from 44 to 140 million, the number of branches went from 510 to 1,300 and the international network spread from 11 to 26 countries. It also increased its turnover by 50 per cent between 1992 and 1995. In the meantime, other multinationals have been doing better and the ranking of these major PREA has changed. This area of PREA activities is none the less becoming stronger and stronger.

Staff leasing agencies have existed since 1983 in the United States and are poised to spread to other markets (including the United Kingdom). From 1983 to the end of 1984 in the United States, the number of workers leased rose from 4,000 to 60,000. Around the middle of 1985 there were 275 agencies leasing 75,000 workers with a range of skills. By the end of 1992, there were some 1,400 agencies handling 1 million workers. In the United States, the development of staff leasing agencies has been truly remarkable. Their turnover, based on available data, is currently estimated at around 25 per cent of that of TWAs. The number of workers covered by this type of PREA in the United States will most likely exceed 1.5 million in 1995. Having maintained a growth rate of more than 10 per cent during an entire economic cycle, their role is becoming increasingly important within the United States economy, a phenomenon that should quickly extend to other industrialized countries. The annual growth rate will soon be in the region of 35 per cent. Some authors forecast that there will be some 10 million leased workers in the United States by the year 2000. If such is the case, this profession will move to the forefront of private employment agencies.

Direct services

Outplacement agencies did not make their appearance until the end of the 1960s and grew slowly until 1980, when they took off. Indeed, annual growth rate was often as high as 35 per cent. They have not undergone major restructuring. The market is dominated by a few large companies (at international level), together with a large number of agencies with humble beginnings but which have been very dynamic (national market) and many small agencies dependent on individual know-how. These agencies appeared on the scene in 1969 in the United Kingdom, in 1973 in France, in 1979 in the Netherlands, and in 1980 in Switzerland. Since 1983, they have spread to ten other countries.

Many agencies engage in outplacement as a sideline alongside other activities. Turnover for these agencies as a whole in 1992 was estimated at 1 billion dollars, with the United States alone accounting for a quarter of the market.

In proportion to the economically active population, the most dense network of agencies is in the Netherlands, where there are six major national and international

agencies and 120 smaller ones, as opposed to the United Kingdom which only has 150 agencies in total for a population four times the size of the Netherlands.

Outside the United States, the highest turnover is registered in the United Kingdom, which with US$100 million in 1992 amounted to eight times that of the Netherlands. Germany seems to have the fewest agencies: at the end of 1992 there were only 13 firms in operation, with a turnover of US$18 million.

The development of outplacement agencies in the United States since 1992 is evidence of how rapidly PREA are responding to market changes. When the economic situation started improving, the classic case of re-entry of executive staff became relatively less important. However, outplacement agencies became partners in enterprise restructuring. They found a niche by helping enterprises to adapt to increasing competition. Whenever the economy picks up, these agencies focus on improving enterprise structures; when there is a downturn, they turn their attention to dismissals. They are evidently responding to general structural needs as well as to the economic requirements of the moment, thus providing a valuable human resource service within a context of structural adjustment.

Risk of abuse by PREA

During the discussions of the Committee on Private Employment Agencies at the 81st Session of the Conference in 1994, many Workers' and Government members strongly criticized PREA behaviour, essentially echoing the observations made by the Office in this regard.[1] Members pointed out specific cases of abuse and questionable behaviour by certain PREA. By way of example, private employment agencies neglected underprivileged workers, such as young persons without training or the long-term unemployed, being interested only in those most ripe for recruitment, so as to increase their turnover and profits. In this context, the role of the public service would be to cater to the underprivileged, to provide them with a replacement income, and to offer guidance and training programmes. Looked upon as a provider of social assistance, the public service could no longer present itself as an instrument of state economic policy, and had to relinquish its position of labour market regulator. It was claimed that this division of roles between the public service and private agencies was prejudicial to society as a whole. Experience had shown that the public service would be better able to "tackle" social matters if employers considered it to be capable of putting forward effective solutions to recruitment and human resource management problems.

Yet another criticism of private agencies was that because they were constantly striving to capture even larger market shares, they were ever ready to supply the skills demanded; this encouraged employers to turn to them whenever there was a need for new skills and to get rid of workers who lack them.

Many members of the Committee noted that employers preferred not to invest in in-house training to update their employees' skills. Instead, they dismissed those who lacked the new skills, then recruited others trained by private agencies, thus speeding up labour turnover. Older workers with outdated skills were eliminated in favour of younger workers whose training matched the new needs of the enterprise.

An extremely mobile market provided private agencies with frequent profit opportunities. As commercial enterprises, they accelerated labour mobility in order to optimize their profits. They encouraged enterprises to give up their retraining programmes and speed up their labour turnover. They had a commercial interest in

replacing workers as often as possible, offering them the prospects of a better job, which was detrimental to the good functioning of the labour market.

Faced with a skills shortage, private agencies had no interest in remedying the situation since it boosted the value of supply and made it possible to move workers with skills in high demands from one job to another. The turnover for these agencies was high when job rotation pushes up wages, since their fee is based on a percentage cut.

To respond to enterprises' need for flexibility, TWAs and other private agencies offered them workers only for the period during which this manpower is needed, while contract labour agencies offered the possibility of outsourcing some of their operations.

It was obviously in the interest of these agencies to promote greater use of temporary or contract workers. They therefore encouraged enterprises to replace their permanent staff with temporary workers, on the pretext of flexibility.

Some agencies took advantage of the enterprises' need for flexibility, thus making employment even more precarious.

Several members of the Committee viewed the role of private agencies as doubly harmful in terms of labour market information. In a monopoly situation, all the job vacancies coming on to the market converged on a single institution, offering all jobseekers equal access to a job. In contrast, the multitude of private agencies dispersed this information to the advantage of workers who had access to it. This inhibited the application of a basic principle of democracy: equality of opportunity and treatment in employment. Moreover, the proliferation of private agencies made it difficult to collect information on jobs wanted, vacancies and placement. They were also reluctant to make all this information available, although it was indispensable for understanding the current and future market. Without it, the efforts of public authorities in their decision-making and market-regulating role was hampered. Once again, these agencies undermined the sound functioning of the labour market.

Although competition was often considered healthy, that between private employment agencies had negative effects. Alongside the large, well-established agencies with transparent practices, a multitude of others were barely profitable. To consolidate their market position or avoid bankruptcy, they did not hesitate to manipulate their figures when dealing with the authorities, pared back the benefits to which workers are entitled, and reneged on their obligations. Often it was only after having committed innumerable abuses that these small agencies cleaned up their practices and achieved maturity.

When they were driven to bankruptcy, these agencies left a grim record of commercial damage and personal harm in their wake.

The effect that PREA behaviour had on industrial relations continued to fuel controversy. Workers' organizations pointed to the negative repercussions these agencies have on industrial relations and worker protection. They drew attention to incidents in which TWAs were mainly involved, supposedly in order to keep trade unions from being recognized, to weaken their bargaining power, and to break strikes. Furthermore, TWAs allegedly exacerbated the deterioration of working conditions and social protection. It is claimed that certain PREA attempted to exploit vulnerable groups. All of these examples illustrated the importance of changing the way in which industrial relations were developed vis-à-vis PREA. There were remedies to cope with these types of abuse and they were mostly in the area of industrial relations. A

recognition of the status of PREA and their contribution to the functioning of the labour market would herald a new approach to social dialogue. The integration of PREA activities into collective agreements would be a major step towards increasing social justice in this field.

Public and private services in direct competition

At the 81st Session of the Conference in 1994, members of the Committee on Private Employment Agencies examined the contributions of both public and private employment services. During their discussions, the role of these services and the following pros and cons of their participation in the labour market were pointed out:

- detractors of private agencies cast doubt on their morality, even considering them to be inhuman. However, history teaches us that everything changes — individuals, societies, occupations and enterprises. For 50 years now, private employment agencies have been gradually cleaning up their business practices. They have set up self-regulating machinery to protect the profession and training programmes, thus trying to live up to the expectations of their clients, whether individual workers or enterprises;
- there are lapses of conduct, but this holds true for many other sectors and does not justify the banning of every private agency;
- some States point to abuses committed by private agencies without noticing their own. The greatest abuse of all would be to ban private agencies from the market, making them the exclusive reserve of a frequently inefficient public service;
- States think that employers will place all their job vacancies with the public service; by imposing a monopoly, States prevent the labour market from thriving and compel employers and workers to conform to practices unworthy of a modern society;
- no State can alone respond to every need within the time-frame of a market which requires millions of rapid and efficient operations every day. Professionals must be allowed to provide these services.

From this standpoint, monopoly is an abusive practice, and even more so when public service is inefficient. In this age of transition, public authorities should mobilize all of society's capacity for creativity. Faced with an uncertain future, the labour market should try out new ways of matching people to jobs. A monopoly on placement would stifle the dynamic approach of private agencies seeking to adapt to and create new work structures. A monopolistic public employment service is therefore not desirable. In the past, private agencies have been unceasing in their attempts to adopt innovations in labour market management.

It is now acknowledged that PREA can contribute towards a better functioning of the labour market. Their services boost economic productivity in response to demands by the economy. Wherever PREA access to the market has been liberalized, for example in the Netherlands, their services have multiplied. If these markets are well-structured, inter-agency competition will hold prices down. PREA will focus on those activities in which they hold a competitive edge. A smoothly operating market will enhance healthy competition among these agencies. This will, however, also

bring them into competition with public services. It would be useful to determine in which areas public and private services engage in direct competition.

The previous chapter addressed the areas in which public services provide essential functions and thus play a predominant role. Other than these duties, it could be argued that PREA should prevail. However, there are several arguments for creating conditions that would enhance competition between PREA and PES for certain services. An initial justification for PES participation is bound up with fairness and social justice. Access to a job should be open to all those who have the required skills. Without PES participation, there would be a "top slicing" of human resources to fill vacancies. Competition between PREA and PES will make the conditions for access to employment more equitable.

A second argument in favour of PREA-PES competition is mainly a question of the effectiveness of the latter. It is now a well-acknowledged fact that the quality of PES services depends on the scope of these services. For example, it has proved to be difficult to deal with the long-term unemployed when the public service has not had access to the market for the skills most in demand. When PES are limited to the hardest cases, they are at the same time deprived of the tools needed to serve these disadvantaged clients.

A third argument in favour of free competition among PREA and PES concerns the development of an institutional framework of cooperation among all services. Once it has been admitted that there should be competition, this should be institutionalized, therefore providing the best guarantee that these services will benefit from the rapidly changing labour market. This particularly holds true for services of placement and preparation for future employment.

Placement and counselling

Placement is one of the oldest services found on the labour market. It lies at the heart of the provisions of Convention No. 96 as well as the Employment Service Convention, 1948 (No. 88). Placement brings together employers and workers; it monitors trends in labour markets. In this regard, it provides strategic information for a number of operations. It is therefore a vital function for both PREA and PES.

If placement operations and related services such as counselling are to be competitive, a precise definition of the conditions in which all agencies should work is needed. This cannot be done without taking national situations into consideration. To ensure that this competition is open and fair, more must be done than merely adopting regulations for PREA; account must also be taken of support measures such as programmes aimed at re-entry into the labour market, which facilitate placement by certain services. Placement in terms of unlimited competition represents a challenge to the organization of the labour market. Increases in the placement rate of disadvantaged groups will be one criterion of how well the agencies — public and private — have met this challenge.

Preparation for future employment

A market economy imposes its own rules when it comes to forecasting the eventual behaviour of supply and demand, a situation that reflects the volatility of this market. Actors must be well-informed as to trends, and capable of using this information to predict probable shifts in supply and demand, assess the level of skills

required, and calculate costs and prices. Armed with this knowledge and expertise, they will be able to manage future supply and demand.

Competition between PREA and PES enhances human resource management, which takes more into account probable trends in labour markets. All these services will be well-advised to pay closer attention to the signals coming from these markets, and to make more accurate forecasts. Clients, and most of all jobseekers, will turn to those services that best respond to this volatile situation. This applies to every action that could be considered as an investment in future employment, particularly as regards training, adaptation to employment and redeployment. The same holds true for services aimed at preparing for entry into the labour market or a career, such as vocational guidance.

Complementarity between public and private services

Competition between PREA and PES tends to boost the effectiveness of the labour market; it might also contribute to social justice if it takes place under the proper conditions. However, it must also operate in such a fashion as to contribute to the smooth functioning of future markets. For this reason, rules must be introduced which favour the optimum division of tasks between PREA and PES.

Certain functions have been shown to be strictly within the domain of PES. Moreover, a public service should, by its very nature, be kept perfectly informed of the behaviour of the labour market, which is part of the PES image. Yet PES can never satisfy every market demand, nor has such ever been considered. Even in cases of the strictest of monopolies, there are certain services which PES could never be expected to perform, particularly in the case of artistic work (impresarios). In terms of increasing PREA role in the functioning of the labour market, a more appropriate task-sharing is called for. These private agencies should continue to operate as they have always done and compete with other agencies. But complementarity would be more fruitful if PES and PREA provided different services.

PES have their prerogatives, but they also have their limitations. First of all, they cannot be everywhere. Owing to budgetary restrictions, they must target their programmes and make an optimum use of their resources. By striving to boost effectiveness, PES will concentrate even more on placing jobseekers; of course they will also endeavour to provide better services for disadvantaged groups. Although PES could handle every operation, the competition with PREA will induce them to channel their activities into specific areas. By the same token, PREA will evolve toward those services in which they enjoy a comparative advantage. As the functioning of most of the labour market now stands, PREA are most likely the best placed to respond to the need for temporary labour and related services.

Cooperation between PES and PREA is based on a natural complementarity between these services. While acknowledging that some areas should be reserved to PES, it is evident that competition would favour PREA specialization. It is difficult to predict the exact direction this development will take, once the principle of monopoly in a market economy has been abandoned. The social cost of PREA-PES competition in every area would be prohibitive; indeed maximum cooperation between the two should be based on a division of activities tailored to each market and dependent on national conditions. Complementarity of functions would increase the value of services overall. A labour market in which PREA and PES turn out the same services

would not necessarily be an efficient market operating in the best interests of social justice.

Complementarity would involve cooperation between PREA and PES for specific client services, and could take many forms. For example, public services could delegate certain functions to PREA, as has already been done in Switzerland and Australia. In the Swiss canton of Saint Gall, private agencies have been taken on by PES to carry out placement and counselling of activities, and to motivate jobseekers — including long-term unemployed — through job-search courses and other programmes; they have also been entrusted with training and are paid by the hour for services, regardless of the result. In Australia, counselling of jobseekers is in part carried out by 270 "case management providers", i.e. PREA which are bound by contract to PES. The tendency in this country at the moment is to contract even more of PES functions, thereby creating a hub of services required for the proper functioning of the labour market. This delegation of functions could be institutionalized through statutory regulations; in other cases, it could be a matter for the administration.

Complementarity between public and private services could make the functioning of the labour market not only more efficient but also more fair. It would not merely be a compromise between the free market and regulation. A new framework could favour economic development and social change, which would by and large depend on the institutional and legislative context — along with the quality of relations between the actors.

Notes

[1] ILO: *Record of proceedings*, International Labour Conference, 81st Session, Geneva, 1994, pp. 21/1-32.

[2] ILO: *The role of private employment agencies in the functioning of labour markets*, Report VI, International Labour Conference, 81st Session, Geneva, 1994, p. 11.

[3] ILO: *Record of proceedings*, op. cit., p. 21/26.

[4] ibid., p. 21/26.

[5] ILO: *The role of private employment agencies in the functioning of labour markets*, op. cit., Ch. II.

[6] D. Smith: *TEMP: How to survive and thrive in the world of temporary employment* (Boston and London, Shambhala, 1994).

[7] Belgium, Ministry of Employment and Labour: "Outplacement: l'heure de la mesure", *Revue du travail* (Brussels), No. 13, 1994.

[8] In this regard, see ILO: *Home work*, Report V (1), International Labour Conference, 82nd Session, Geneva, 1995, as well as the Report of the Committee on Home Work for this same session, in *Provisional Record*, No. 25.

[9] ILO: *Record of proceedings*, op. cit., p. 21/27.

[10] ILO: *The role of private employment agencies in the functioning of labour markets*, op. cit., Ch. V.

[11] ibid., Ch. III.

[12] "Job agencies push for end to regulation", in *Asahi Evening News*, 1 July 1995.

[13] ILO: *The role of private employment agencies in the functioning of labour markets*, op. cit., Ch. V.

CHAPTER III

LEGISLATION AND PRACTICE CONCERNING PRIVATE EMPLOYMENT AGENCIES

PREA operate within a framework of legal provisions and administrative supervision, although that framework may not necessarily be clearly defined. There may be a legal void in the PREA environment in some countries because appropriate provisions have not been laid down at the political level. PREA growth has often been too rapid to allow legislation to keep pace. In other cases, as in the United States, ordinary law and jurisprudence make up an environment which is constantly changing and developing. This chapter examines the establishment of a legal framework for the development of PREA. It is based on the legal and other aspects of the private management of employment discussed at the 81st Session of the Conference in 1994 and reflects the legal provisions established in member States since the preparation of the report submitted to the above-mentioned session of the Conference.[1] However, the situation is changing very rapidly and the examples given below are intended only to highlight some trends.

Several factors have played a decisive role in the establishment of the legal and political environment of PREA. These factors concern both the principles of law and economic realities. In purely legal terms, legislation has a twofold objective: first, to establish methods of operation for PREA which are known to everyone; in this respect, recent legislation seems to have tried to introduce greater clarity into a sphere notorious for its ambiguity. Second, legislation seeks to protect workers and jobseekers against abuse; it should be noted here that Convention No. 96 has had a beneficial and direct influence in countries which have ratified it or an indirect influence in the case of other Members. Other Conventions and, in particular, the Employment Service Convention, 1948 (No. 88), have also helped improve the management of the labour market and the functioning of PREA.

The economic reasons which have led to the broadening of legislation are similar in kind to the legal arguments: the development of a market economy necessarily requires a stricter management of the functioning of labour markets. The strengthening of competition and the freedom of enterprises, as creative forces in society, must be set within a framework of equal opportunity, which in turn enhances the argument for transparency in the functioning of labour markets. Economic and legal arguments therefore converge concerning the need for clarification of legislation. Similarly, there is a corollary between the legal concept of protection against abuse and the economic need to avoid negative consequences in the functioning of labour markets.

However, the free interplay of market forces and competition raises special problems at the international level. While competition is becoming increasingly international, the ground rules are always determined at the national level. Globalization restricts the leeway of the national authorities: the rules are increasingly

difficult to determine and apply and it is sometimes impossible to prevent abuse and punish infringements. The authorities are not in the best position to negotiate new regulations which take account of this international aspect. Furthermore, this is true not only of PREA but of PES, whose mandate is to promote the best possible organization of the employment market, as an integral part of a national programme to ensure and maintain full employment and to develop productive resources. The globalization of markets and the international mobility of labour do not make their task any easier.

For decades agencies have constantly sought a balance between legislation establishing and protecting their activities and provisions which do not hinder their development.

In the United States and Switzerland, the agencies adapt well to the rules laid down by the ordinary law and voice no need for specific regulations. However, they have been willing to supplement these rules in the form of codes of professional ethics or good conduct.

On the other hand, wherever their activities are challenged, agencies call for regulations which guarantee them legal status, stability in their profession and an objective guide to the rules of fair competition. This is the case in Argentina, the United States (leasing companies), Spain and Italy. To overcome the monopoly system, private agencies have been seeking the backing of legislation. Since the 1960s they have argued successfully that, since their activities could not be called placement, they were not subject to the rules on monopoly. Executive search and consequently outplacement agencies have followed the example of the TWAs.

The adoption of TWA legislation has been considered by the agencies themselves as a fundamental development. Such legislation recognized them and placed them outside the scope of provisions concerning the placement monopoly. A large number of other agencies obtained the same result. However, while regulations may grant legal existence to agencies, they may also impose very restrictive rules in some cases.

The TWAs, as well as other agencies, have worked towards the adoption of laws applicable to them, although they have also vigorously acted to ensure that such laws do not paralyze their operations. Certain sectors of activity were completely barred to them, such as the building industry in the Netherlands. In other countries, enterprises must justify their use of temporary manpower (Belgium, France) or must conclude contracts of employment for periods longer than the worker's assignment (Germany). In several countries, including Italy, rules limit temporary employment to the market for high skills. After all these years of effort, private agencies may now freely set themselves up on markets provided that they do not label themselves as "placement agencies", which are subject to monopoly regulations. Even when they admit that they are "placement agencies", they start out by operating illegally until their situation is legitimized.

Another sphere where there may be conflict between economic laws and the legal situation concerns information. A labour market, like any other market, will depend for its smooth running on access by all parties to information. Even though in fact that information is always partial, the principle itself remains the basis for the smooth running of the market. This principle conflicts with at least two other interests of the respective actors. First, there is the paramount need to protect the private life of workers, and to a lesser extent the data of enterprises. Personal files and the

widespread use of data processing require special protection to be given to those data, which must be used by the agencies only for their professional purposes. At the same time, and this is the second point, this information is both the capital and main asset of PREA. Although the functioning itself of the market requires such data to be transparent, this information is a management tool as well as a source of personal details.

The objectives and scope of regulations

Agencies may have one of five different types of legal status with regard to the public authorities:

- The status under the ordinary law. Just as any other enterprise, agencies acquire their legitimacy by being entered in the trade register (or with the Chamber of Commerce or the commercial courts, depending on the country) and by declaring themselves to the tax authorities (this system has been in force for a long time in the United States, and since 1990 in Denmark and 1993 in Sweden).
- The status of registered agency. The agency registers with the labour administration and must accept the respective regulations and supervision. However, in the event of these regulations being violated, the labour administration has no authority to withhold a licence to operate (Brazil, Colombia and United Kingdom).
- The status of authorized agency. This is the legal status recommended by ILO Convention No. 96. The agency applies to the authority for authorization to operate, which it obtains if the authority judges that the applicant meets certain criteria. The operating licence requires periodic renewal and may be withdrawn at any time in the event of violation of the regulations in force (Australia, Switzerland and countries which have ratified Part III of Convention No. 96).
- The status of franchise-holding agency. This applies in countries where there is a monopoly of placement. The public authorities may delegate to a non-profit agency the power to share this monopoly for a particular trade or clientele. The public authority establishes the rights and obligations of the agency and supervises the latter. The franchise is withdrawn in the event of violation (Germany).
- The status of government-contracted agency. This status is based on the concept of a contract. The public authorities enlist the assistance of private operators responsible for specific categories of the workforce, a trade or region for a particular period of time. The two parties sign an agreement on their objectives, rights and obligations and conditions for the agreement's cancellation (France).

Agencies may also operate outside the law. Some of them disregard the provisions on monopoly, have themselves listed in the trade register and declare themselves to the tax authorities. Once they have gained recognition in this way, they operate on the market until they obtain recognition from the labour administration. In 1985, in Japan, a Temporary Work Act was passed legalizing the TWAs that had existed in practice for more than a decade. A similar measure was taken in Spain in 1994-95. In Italy legislative provisions under discussion will give a legal basis to the many still illegal TWAs now active.

The wide range of possible types of status of private agencies gives rise to a mass of inconsistencies and discrepancies in the way they are treated by the law. Agencies may use their identity to their advantage by claiming to engage in one form of activity rather than another in order to obtain the least restrictive legal status.

The present status of private employment agencies

Since the preparation of the report on the role of private employment agencies in the functioning of labour markets for the 81st Session of the Conference, several countries have liberalized the legal framework and environment within which PREA operate. For example, in 1994 Finland abolished restrictions applicable to placement agencies and TWAs. PREA may now provide manpower services, with the only restriction being that the services must be free of charge for jobseekers. In the United Kingdom, since 1994, PREA no longer need to be licensed. A major reason for this change was the desire to simplify procedure. There are some 15,000 PREA in the country, one-third of which are new each year. Although only just over 50 per cent of these agencies may be considered as well-established, the revocation of licences is rare. In future, management will be through the application of legislation, in particular the provisions on employment agencies and inspection by the competent services. Penalties will be applied by the courts.[7]

The Act regulating private employment agencies in the United Kingdom applies to two categories. The employment agency provides a service to jobseekers by finding them employment and, in the same way, it helps employers in their search for staff. The employment business supplies staff who work for a third party under the supervision and control of the latter. In practice, there seems to be considerable overlapping between these two types of agencies, with many PREA also providing permanent placement as well as temporary placement services. Both types are required to respect the detailed provisions of the law and are prohibited from charging jobseekers for their services, except in certain precise cases such as the entertainment industry. Fair practice rules have also been established. However, those in favour of the abolition of the licensing system have argued that the industry has now become more mature and acquired a greater capacity for self-regulation.

In Spain the Act of 19 May 1994 on emergency measures for the promotion of employment legalized the existence of not-for-profit placement agencies. Since then, the Act of 24 March 1995 has incorporated this text into broader legislation establishing a workers' statute. The workers' trade unions have expressed regret at the authorization of placement agencies and have called for the creation of a modernized public National Institute providing services free of charge. However, a Decree of May 1995 established regulations governing PREA and a plan of integrated employment services under which agencies are required to meet specific criteria. Agreements between agencies and the National Institute make provision in particular for joint studies and a training programme to improve the skills of jobseekers. The Act of 1 June 1994 also legalized the situation of TWAs by establishing the criteria governing authorization by the provincial Directorate of Labour and Social Security or by the labour administrative authority of the respective Autonomous Communities. This authorization is valid for one year and may be renewed twice, after which it becomes of unlimited duration. The Act also specifies the obligations of the user enterprise.

In Austria the participation of PREA in the labour market was broadened in 1994. Before 1 July 1994, the activities of private profit-making agencies were restricted to the placement of executive staff; not-for-profit agencies were authorized with restrictions applicable to certain occupational groups. The placement of jobseekers by agencies has now been authorized without any restrictions concerning the users. TWAs are also allowed to operate, although their market is relatively limited because direct temporary employment contracts are permitted in this country where the rights of temporary workers are similar to those of permanent workers. However, agencies may not simultaneously offer temporary work and placement services.

In Austria PREA must have a licence validated by the PES, which verifies the technical conditions of the licence granted without limit of time. Although the owners and managers of TWAs are already required to demonstrate their knowledge of legislation, the country is now preparing for the introduction of a broader system comprising the verification of the technical skills of staff working in private placement agencies. A similar scheme is planned for the other PREA. Another characteristic of Austrian legislation is that it requires PREA to collect sufficient information to fill vacant posts. In the event of negligence, they are held responsible for any prejudice suffered by a jobseeker. The PREA are also required to provide information, in particular on the time they require to fill job vacancies.[3] Since the introduction of these measures, the number of placement agencies has increased from 15 to around 30 in 1995.

In Germany profit-making placement was already authorized for certain occupations, in particular artists and executive staff, although placement remained confined to management consultancy enterprises in the case of the latter. From 1 April 1994, placement was legalized for all the other categories and 1,825 agencies (profit-making and not for profit) have since been licensed. However, the number of placements made in 1994 remained relatively small and barely exceeded 7,000. For their part, TWAs saw an increase of 20 per cent in the number of their contracts with workers between the first half of 1993 and the first half of 1994.

PREA are required to provide statistical data every six months on placements made and temporary work contracts concluded as regards in particular age, sex, nationality, economic sector and occupation as well as the nature of the contracts (permanent or temporary, part time for placements, duration of contracts for temporary work).[4] Some Länder of the Federal Republic of Germany are experimenting with the START system. This form of temporary work, which originated in the Netherlands, is directed towards the occupational integration of unemployed persons. Although a public initiative, it is implemented by a not-for-profit agency without any State subsidies.[5]

In other industrialized countries, the PREA situation is changing, if not in law then at least in practice. In Belgium national legislation is in conformity with the strictest provisions of Convention No. 96. Fee-paying placement offices are prohibited, although there may be exceptions for some occupations, such as those in entertainment. This system which has existed for several decades is now changing. The Walloon region is studying the possibility of extending authorization for fee-paying placement offices and the licensing of outplacement, recruitment and selection agencies has been made easier in the Flemish community. TWAs are also very active in this region, which went even further along the path towards liberalization by adopting in April 1995 a Decree to regulate fee-paying placement.

Although the text has not yet come into force, there is no doubt that the monopoly of the public placement services in Belgium is disappearing.

In France private profit-making placement agencies are authorized only for temporary work, artists and managerial staff. Non-commercial placement is allowed. The texts governing temporary work were revised between 1990 and 1992 and PREA and TWA activities are currently experiencing a sharp growth. An interesting aspect of the situation in France is the increased cooperation between the PES and the temporary work enterprises. For example, a framework partnership agreement was concluded in 1994 to improve the services provided to enterprises, increase the fluidity of the labour market and combat unemployment by increasing opportunities for integration by jobseekers, in particular through the display of job vacancies.[6] The situation in France also reflects the constant efforts made to ensure that trade union rights are respected in the activities of PREA, and in particular in TWAs. Since the beginning of the 1980s, legislation has prescribed the conditions for the appointment of trade union delegates. An agreement was reached by the social partners in 1984 on trade union rights in temporary work which takes account of the mobility of temporary workers and the dispersion of their workplaces. An additional clause to the 1984 agreement, concluded in 1995,[7] provides for improved training and career development of trade union delegates and the distribution of trade union information. This clause was concluded as an integral part of a wide collective agreement. It should be noted that given the special characteristics of this branch of activity it is usual practice in France to accord a prominent role to joint occupational committees.

In Italy two Bills placed before Parliament in 1995 are important to PREA. The Bill on the organization of the labour market concerns the placement activities of the PES and PREA and marks an important step towards the authorization of the latter. The Bill on the flexibility of the labour market deals directly with the activities of temporary work agencies. The Court of Justice of the European Communities examined a case concerning temporary work in Italy and concluded that it was not competent to examine the dispute for reasons of form. It is probable that the question of substance concerning the prohibition of PREA activities will be resolved by amendements to Italian legislation. It should be noted in this connection that a 1993 ruling of the same Court had a major effect on the end of the placement monopoly in Germany.[8] For the moment, the European Union has not been able to harmonize approaches to the contribution of PREA to the smooth functioning of labour markets.[9]

Turkey proposes to diversify its employment services, while protecting the interests of jobseekers, with support from the World Bank. The Turkish Employment Agency has drawn up a plan for the gradual deregulation of the employment and vocational guidance services which has benefited from the collaboration of the social partners and an in-depth study on PES and TWAs in several European countries. Bills on the subject were placed before Parliament in April 1995.

In countries with favourable social and economic conditions, where the labour market has not been paralyzed by high unemployment, PREA are subject to stricter regulations. For example, in Luxembourg, they must obtain a licence from the Ministry of Labour which is valid for a period of 12 months and may be renewed. A hiring-out contract must be concluded between the PREA and the user enterprise, and an assignment contract drawn up between the worker and the PREA for a maximum duration of 12 months, including where applicable, a trial period. The user enterprise

is responsible for the worker and the PREA is responsible for the remuneration, which may not be less than that of a permanent employee with the same qualifications. If the PREA terminates the contract before the date fixed in the contract, the worker is entitled to the remuneration provided for in the latter. Disputes about hiring-out contracts come under the jurisdiction of the district commercial court and those concerning assignment contracts under that of the labour tribunal. The secondment of temporary workers between two enterprises is highly regulated along the lines of the provisions concerning PREA activities. Heads of enterprises must consult the joint works committee if they wish to recruit temporary workers and the user of temporary workers must submit to the joint works committee respective contracts concluded with the PREA.[10]

In Japan 1985 legislation legalized the status of TWAs, although the situation is still evolving. Originally, temporary work was limited to 16 (now 18) occupational categories, but market realities are encouraging the administration to broaden the scope of the law.[11] However, the authorities are very aware of the risks to which temporary workers are exposed. The contract must describe the work to be performed, the exact working conditions, and the supervision of the worker at the workplace by the enterprise as well as by the TWA. The latter has the responsibilities of an employer but legislation on worker protection applies to the user enterprise. Equal treatment must be granted to TWA workers.

In Malaysia PREA have been authorized since 1981. However, the main problem is the illegal situation of many immigrants who have been attracted by the rapid economic development of the country but who are recruited by unscrupulous agents. The Government has recognized the urgent need to review the legislation on PREA. Singapore amended its legislation on such agencies in 1993. A licence is valid for 12 months, which may be renewed, and the PREA is required to provide a guarantee of 20,000 Singapore dollars. The legislation also stipulates that the agency may not withhold the passport or work permit of an immigrant worker.

In Fiji there are a few PREA of a commercial or other nature, although no special regulations have been established. The Government and the social partners have not given priority to this subject.

In the developing countries, acts of abuse by unscrupulous PREA are often the reason for the existence of stricter regulations. For example, in Indonesia, the main reason for the review of recruitment legislation was the exploitation of jobseekers. The purpose of the new Decree is to improve the organization of recruitment and working conditions and strengthen the functioning of labour markets. However, the text which regulates employment in Indonesia and abroad stipulates that one of the objectives is to obtain foreign currency for the State. Indonesia has set up an elaborate system of support for the preparation, implementation and monitoring of the recruitment of workers under which PREA must meet a number of criteria, which include not only the customary conditions, such as financial deposits, but access to training. Provision is made for capital participation by PREA employees in the form of a cooperativ Licences are granted for an indefinite period. The Decree also contains instructio, on the organization of transfers of money by workers abroad, regulates PREA fees and authorizes agencies to charge, at least in part, for services provided to jobseekers.[12]

The developing countries see PREA as a means of promoting employment, with placement abroad providing not only an opportunity for relatively well-paid work but

a source of foreign currency. There are countries all over the world whose income from traditional exports is less than the capital generated by their migrant workers. In this connection, mention can be made of Bangladesh, Egypt and the countries surrounding South Africa, as well as many others.[14] PREA are very active in these manpower flows. At the national level, they can also help find work for underprivileged groups, in particular women workers. In the poor countries, job-creation remains the only means of eliminating poverty and it is in this context that many countries have made efforts to promote labour placement abroad. Ten years ago Bangladesh established a veritable code of employment abroad[15] and, since 1985, the number of Bangladeshi workers placed abroad, mainly in Saudi Arabia and Malaysia, has increased by 15 per cent a year. In 1994 there were more than 400 PREA in Bangladesh. In 1985 Nepal passed a law to regulate work by Nepalese abroad. More recently, this country began to promote more aggressively the commercial exportation of labour, with the publication of a brochure for foreign employers highlighting the advantages of recruiting workers from Nepal, with details of the respective organizational arrangements and formalities.[16] Other countries, such as Pakistan and Sri Lanka, have already acquired long experience in this sphere. Both have a parapublic organization for employment abroad, which was established 20 years ago in Pakistan and 10 years ago in Sri Lanka. In Pakistan there are around 1,000 PREA active in the placement of workers abroad, and 350 in Sri Lanka (June 1995).

In Africa national law and practice concerning PREA are being reviewed in the light of economic crises and structural and political changes which have occurred in this continent. In the English-speaking countries, the legal provisions generally require the issue of a licence, although practice depends on the political environment, as can be seen from the case of Zambia. For decades, this country followed a policy of transition towards socialism, with the political party in power advocating that public employment services should be provided free of charge. PREA were considered detrimental to this objective and licence requests from such agencies were refused. However, the economic crisis brought about political changes and structural adjustments in Zambia's economy, which have led to several recent initiatives and proposals concerning PREA, whose activities are now viewed more favourably by a Government which supports the liberalization of the economy. Legislation and regulations on PREA and PES are being reviewed with the aim of promoting competition between the employment services in the country's market economy. The Government of Namibia, which is suffering from a very high rate of unemployment, has also made employment promotion a goal of its new legislation. The 1995 Bill on the employment services recognizes the existence of PREA, which will probably be granted a licence issued by the National Employment Services Office.

There is a similar concern with adapting legislation to new socio-economic conditions in French-speaking Africa, as can be seen in the case of Burkina Faso. In the light of structural changes, the country revised its Labour Code in 1992 and other revisions were planned from 1994, the objectives of which were related to the liberalization of the economy and the need to make legislative provisions more effective. The placement monopoly of the National Office for Employment Promotion (ONPE) was abolished in 1992. The principle of the existence of private placement agencies and temporary work enterprises has been recognized in the Labour Code and a 1994 Decree stipulates the conditions governing their establishment. Although the regulations have not yet been completed, PREA may

now obtain a provisional licence. Several other French-speaking countries in Africa have followed suit, including Benin, Côte d'Ivoire, Mali and Togo. On the other hand, several other countries, such as the Central African Republic, Chad, Gabon or Guinea, have maintained the principle of a public monopoly over placement.

In Latin America various approaches have been adopted. For example, legislation in Guatemala has for a long time prohibited the establishment of fee-paying placement agencies. On the other hand, Brazil is one of the countries which have denounced Convention No. 96 and TWAs are very active there. Other countries, such as Argentina, Chile and Colombia, have established relatively detailed legislation on PREA and Peru has also drawn up legislation on TWAs. However, in recent years there have been no special initiatives to promote the participation of PREA in the social and economic development of the continent.

In the Arab countries private placement agencies are still often prohibited or subject to strict regulation. The new Labour Code of Iraq prohibits such agencies. In Kuwait a Bill was placed before Parliament in 1995 to legalize PREA. Profit-making employment agencies for the placement of nationals have now directed their activities towards the placement of foreigners, although there are still no detailed regulations in this sphere. Countries which import a large volume of labour have generally established specific regulations for the recruitment of non-nationals and profit-making placement agencies must obtain a licence. The regulations do not only refer to administrative aspects, such as the nationality of the owner or bank deposits, but may also prohibit the payment of fees by workers and require the drawing up a written contract between employer and worker. The purpose of these regulations is to stipulate the conditions which must be observed by employers, who often have difficulties in finding national workers for certain economic activities. This is particularly the case in the Gulf countries, such as the United Arab Emirates, as well as Saudi Arabia. In countries which import a large volume of labour, private agencies which place nationals are, however, still few and far between. Recent regulations in Oman authorize the placement of nationals by private agencies : one of the objectives of these regulations, which govern the import of labour and the placement of nationals, is the "Omanization" of workplaces.

The other countries of the Middle East and those of North Africa have not yet revised their existing legislation on placement agencies, which is often very old. In general, profit-making placement agencies are prohibited. However, in several countries, such as Egypt and Tunisia, discussions are under way to bring legislation up to date, thereby legalizing a *de facto* situation in which agencies already operate for certain categories of labour.

Bahrain promulgated a legislative decree on PREA for the first time in 1993 which sought to broaden the employment opportunities of nationals. The conditions governing the issue of a licence are mainly administrative and are designed to guarantee the honesty of the agencies. The text also stipulates the information which PREA must make available to the authorities, including job vacancies, the name of jobseekers and placements. On the other hand, it makes no mention of the required occupational qualifications.[16]

Many PREA have been appearing in the countries in transition towards a market economy, where basic legislation often prescribes the issue of a licence. Poland revised its legislation on public and private employment services in 1994, which came into effect in 1995. Section 37 of the new Act authorizes placement within the country

and abroad, but only on a not-for-profit basis. The authorization is valid for one year and may be renewed.[1] In the Russian Federation legislation has been drawn up but the application regulations have not yet been published. There is very little information on the operations of PREA in the transition countries where their status remains controversial.

In Australia legislation on PREA is the responsibility of the respective States and the territories. Only four States have established such legislation, which requires these agencies to obtain a licence. Furthermore, PREA activities in Australia are often regulated by specific provisions of the Commercial Code, which protects in particular jobseekers by prohibiting misleading advertisements of vacant posts. This provision may be incorporated into the legislation of the respective State. This is the case in the PREA legislation of New South Wales, which prohibits the payment of placement fees by jobseekers. This prohibition does not exist in other States, although it is rare for jobseekers to pay for these services. The association of private employment agencies in Australia has opposed the payment of fees by jobseekers. The situation concerning the information to be supplied also varies substantially from State to State. In most cases there is no obligation for PREA to provide information to the competent authorities, although some States, such as Queensland, require them to keep records on placements. In these circumstances, it is difficult to identify any trends in PREA activities, although it is estimated that the number of licences issued (an agency may hold several licences) has risen by 9 per cent a year since 1985 in New South Wales.

Although PREA are not very regulated in Australia, the current trend is towards deregulation. For example, in Queensland, the objective is to achieve a high degree of self-management by agencies before the end of 1997, a target rendered possible by the development of the profession and of the association of PREA. Furthermore, Australia has adopted a policy to encourage public and private initiatives to promote employment and uses the services of private agencies in the fight against long-term unemployment. Unemployment assistance is carefully programmed to improve a person's capacity to obtain employment. Assistance for the long-term unemployed is based on an integrated approach and is similar to the direct services provided by some kinds of PREA.

Powers of intervention

Labour markets function within an institutional framework often shaped by decades of social struggle. The means of intervention in the functioning of these markets are determined by this institutional framework. In Belgium regulations on outplacement offer an example of the tripartite management of the labour market. Outplacement first appeared in Belgium at the beginning of the 1980s when other methods of dealing with the crisis in employment no longer proved adequate and when it became clear that the crises were not only conjunctural but structural. Outplacement proved itself capable of contributing to career management in different market conditions: it was well viewed by enterprises and was expanding rapidly. The Consultative Commission for Executive Staff began to study this new technique accompanying layoffs towards the end of the 1980s. In 1989 the Minister of Employment and Labour sought the opinion of the National Labour Council on the subject of outplacement. The Council issued its opinion in 1992. Meanwhile, a

collective agreement on outplacement had been negotiated, which established the legal framework of the technique in Belgium. The different regions of the country have supplemented the agreement by specific regulations, although it is the collective agreement which provides the main framework for the management of the labour market in this PREA sphere. The powers of intervention are thus limited by the scope of this agreement and by the employment contracts which are subject to the latter.

It should be noted that the Belgian agreement stipulates the obligations of an outplacement agency, which must not operate as a recruitment and selection agency. These rules have been strengthened by regional legislation. Authorization is granted only if the agencies meet a number of conditions, in particular if they provide guarantees of their honesty and professionalism. The Licensing Commission, which has wide-ranging powers and plays a role in supervision and the application of sanctions, is an integral part of the tripartite management of Belgian labour markets.[17]

In Switzerland, the confederate structure might be seen as complicating the means of intervention on the labour market, although this is in fact not the case. Regulations are precise but transparent and their implementation is based on the partnership principle. The legal basis of interventions is the Constitution itself, which refers to the placement service. The federal Act respecting employment services and the hiring of services, which applies to PREA in particular, was revised at the beginning of the 1990s. Although there is a well-known central coordination service, public placement is for the most part left up to the cantons. The system tends towards greater collaboration with PREA. Private placement and the hiring of services are subject to approval, but once requirements have been met, the authorization is granted for an unlimited period of time. It may, however, be withdrawn for the reasons stipulated by the law. The administrative services monitor compliance with the obligations and may initiate legal proceedings. Disputes are settled by arbitration.[18]

The powers of intervention on international labour markets are particularly limited, as can be clearly seen from the difficulties encountered in the application of national and international legislation on migrants. At the same time, the scope of protection granted to migrant workers depends on political circumstances. In this context, it should be noted that the ILO Conventions respecting migrant workers, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families have been ratified by only a few countries[19] for which furthermore the migration of workers is not always an important subject. Migration for employment gives rise to considerable abuse and PREA are very active in the sphere of international migration.[20] The objectives and scope of the regulations on the recruitment of workers for employment abroad are limited by the need to establish an international political consensus and the contradictory requirements of the respective markets and national policies. For example, it is not necessarily in the interests of migrant workers for agencies to be reserved exclusively to nationals. In the same way, it may be asked to what extent such agencies are able to represent foreign employers in their negotiations with workers. In the event of abuse by these employers, it is difficult to invoke the responsibility of the agency. The regulation of international placement is difficult and many protection measures, such as those limiting the fees paid by migrant workers, may have secondary adverse effects on jobseekers. It is therefore particularly important to establish a dynamic balance

between the efficiency of international markets, worker protection and social justice.

Towards a common, coherent and complementary system

National law and practice concerning PREA have developed in the light of the objectives pursued implicitly or explicitly on the labour markets. In many countries, the PES monopoly has its origins in the social struggle for the protection of workers. In the absence of strong worker organization, and the lack of training and weak position of workers on the labour markets, the State has assumed responsibilities in the matching of supply and demand. The monopoly position has also been defended on the grounds that it improves the allocation of skills. Even in countries with a liberal approach to PREA, regulations are mainly directed towards the protection of labour.

Although worker protection remains an important objective of PES and PREA regulations, it is now far from being the only goal pursued on the labour markets. Over the years, the public authorities have been called upon to protect PREA against the illicit practices of unscrupulous operators. Moreover, they were themselves beginning to take an interest in PREA for financial reasons related to taxation or social security. In more general terms, the worker protection objective was complemented by the supervision of the participants on the labour market, which led to a more formal organization of the relationship between the actors and the regulation of their participation. In many countries this framework took the form of preventive legislation requiring prior authorization and more or less strict supervision of PREA by the public authorities. The latter were often represented by the PES which therefore became both judge and jury in the functioning of the labour markets.

The development of market economies and labour markets has, as noted in Chapter I, influenced recent PREA legislation. In many countries improving the functioning of these markets has become one of the main goals of social and economic policy. In several industrialized countries another important objective is the enhanced contribution of the PES and PREA to the matching of supply and demand. This is due not only to their serious concern about unemployment and the low labour force participation rate but to an awareness of the significant development of the PREA themselves, which have broadened their scope of action and become more mature. Although abuse still occurs it is now relatively less serious and frequent in many industrialized countries and self-discipline has improved. There has also been a change in the dynamics of the labour markets and in the way in which participants and policy-makers assess the results of these development processes. A more positive view of this dynamic has gone hand in hand with a more modest assessment of the scope for influencing the behaviour of the labour markets, with greater emphasis now being placed on decentralization and the *a posteriori* elimination of abuse.

It can be concluded that the objectives of PREA regulations have become more complex. They are not concerned only with the protection of workers and jobseekers but with the supervision of all the participants on the labour market and the achievement of the relatively precise goals of employment policy. These objectives are often complementary. Many governments and social partners face difficulties in integrating these objectives into their different social and economic policies and coherence in their action must also be reflected in the regulations governing the

different spheres of activity of the PREA. One of the objectives of the revision of Convention No. 96 is precisely to encourage national authorities to harmonize their different laws and regulations in this respect. As the labour market situation becomes more complex, governments will be increasingly tempted to take advantage of this dynamic by giving greater freedom to the interplay of market forces and by limiting their interventions. This is the philosophy behind several recent initiatives to review regulations.[22]

In countries in which PREA are governed by some general scheme, for example commercial law, the new forms of service do not raise too many problems. The scheme is sufficiently flexible to include PREA which focus on new niches in the functioning of labour markets. In the United States, for example, where there is no prior supervision, these markets determine what type of service is required as well as its quality and price. Market access and participation by PREA are more difficult in countries with a specific scheme, which may take various forms ranging from prior and strict authorization to almost autonomous self-regulation. In these schemes, striking a balance between the protection of workers and the dynamic functioning of labour markets may raise problems. In order to achieve the objectives of socio-economic policies and market requirements, regulations and supervision must be adapted to the existing institutions. An analysis of the situation in different countries shows the great variety of existing institutions and regulations. The liberalization of labour markets requires the adaptation of both institutions and structures and the regulation of these markets. It would appear that the adaptation of institutions should precede that of legislation for the smooth functioning of the labour markets.

The different kinds of schemes and the evolution of markets and the contributions of PREA are not without effect on PES management. An explicit objective of regulations in many countries is to maintain, if not promote, a free public employment service in the sense used in the Employment Service Convention, 1948 (No. 88). The objective is not one of competition between the PES and PREA, but greater complementarity between public and private services. At the legislative level, this requires greater cohesion between general regulations and the specific (public and private) schemes concerned. A common, coherent and complementary scheme will help ensure more efficient collaboration between the different participants on the labour market, which will in turn strengthen the specific services provided by the PES and PREA to jobseekers and enterprises.

Application difficulties

PREA legislation is changing rapidly and its implementation is not always without difficulties. Indeed, from the beginning special rules were deemed necessary for some PREA activities. Thus Article 1(2) of the Convention excludes the placing of seamen, whose working conditions and duration of engagement were some of the reasons which led to the adoption of special regulations contained in the Placing of Seamen Convention, 1920 (No. 9), the revision of which has been proposed. In other sectors, such as art, contracts are often of a very short duration or of a specific nature, and the same is true of other sectors such as sport and entertainment where national legislations have introduced special protection. Elsewhere intervention by the national authorities or the social partners is often requested to restrict the activities of PREA as, for example, in the case of road transportation due to specific working

conditions and road safety requirements. Another reason invoked to limit PREA activities is the quality of labour relations. Thus PREA are sometimes excluded from the building sector to strengthen the impact of collective agreements. However, the evolution of the labour markets seems to be encouraging PREA penetration in these spheres.

The protection of labour relations remains an important objective in the functioning of labour markets. In the event of strike or any other major social dispute, the PREA position is a delicate one and becomes particularly difficult when the dispute concerns the replacement of regular workers by temporary workers or the taking into account of the interests of temporary workers in the functioning of works councils. In order to prevent disputes and maintain harmonious industrial relations, legislation may therefore limit PREA activities.

Another aspect in which the application of PREA regulations raises a problem is the duration of temporary work. Originally, temporary workers were used only to replace absent permanent workers for a relatively short period. The situation has now changed considerably as PREA provide an increasingly wide range of skills and requests are made for services over a longer time. Enterprises often use PREA services to test skills and temporary work has become a means of selecting staff. All these factors mean that the limitation of the duration of temporary work raises a difficulty which for the moment affects only a minority of contracts but which may disrupt the functioning of labour markets.

The integration of a temporary worker into the staff of an enterprise may also give rise to difficulties. In the United Kingdom, PREA require enterprises to pay a high compensation if they recruit a temporary worker. In other countries, integration is facilitated in particular by regulations which prohibit contractual or financial obstacles in such cases. However, the development of labour markets may render such regulations superfluous: competition between PREAs and the interest which they have in maintaining good relations with enterprises and temporary workers should help reduce these compensation practices in the event of recruitment. In this respect national labour market conditions seem to determine the scope of legislation and the application of any PREA regulations.

In some countries, the worker must pay a fee to the PREA. In Canada (Ontario)[1] this fee may be up to 5 per cent of the wage for the first year, payable over three months if the contract is annual. In Thailand[2] the agency may charge up to 25 per cent of the first monthly wage of the worker for placement in a job in the country and, in the case of employment abroad, up to 100 per cent of the first monthly wage if the worker has a contract of one year. Migrant workers may be required to pay the PREA up to 15,000 bahts, and 20,000 bahts, plus the cost of the outward journey, in the case of workers placed in Taiwan (China). In Mauritius[3] the worker must pay the agency 100 rupees plus 10 per cent of his first monthly wage; furthermore, the enterprise must pay the agency 200 rupees plus an amount equal to the first monthly wage.

The diversity of PREA and the nature of the relationship with their clients make it difficult to apply the general principle that services should be free of charge for jobseekers. The old image of a long line of workers waiting more or less passively outside a placement agency no longer reflects the situation today. Although in many countries, both industrialized and in the process of industrialization, the supply of jobs remains insufficient, workers are more active in their search for employment: there is thus an increasingly sophisticated demand for services which is met by the PREA.

Their activities are many and often computerized and their services are far from being free of charge, which poses a problem concerning the application of the no-fee principle. Although the principle of the protection of jobseekers against abuse, in particular as regards the payment of services, remains topical, in a diversified labour market where workers and jobseekers already enjoy some degree of protection, it may jeopardize the smooth functioning of the market and, in some cases, place jobseekers at a disadvantage by preventing them from purchasing effective services in preparation for recruitment.

One difficulty in the application of legislation results from the fact that the initial capital investment of PREA as enterprises may be very low, resulting in solvency difficulties. Legislation in general establishes the financial conditions governing the licensing of PREA.[7] It would seem that this measure to limit free access by PREA to the labour market helps ensure a better quality of services. The public authorities, in close collaboration with the social partners and in particular with PREA staff, must fix the financial conditions with account being taken of both the quality and variety of the services provided by the PREA.

Improving practice by means other than legislation

Although its importance has been recognized, legislation is, however, only one means amongst others for regulating the behaviour of the participants on the labour market. There are different frameworks for achieving each of the regulation objectives. Thus worker protection requires general preventive measures by the public authorities, although the active participation of social partners may also lead to self-regulation; the same is true for the other objectives, such as the management of the labour market or the promotion of employment. This tendency towards self-regulation is strengthened by the mechanisms of the market economy. At the 81st Session of the Conference in 1994, the Committee on Private Employment Agencies examined the means for establishing fair practice in addition to traditional regulations and concluded that governments might seek other means than the traditional legal or regulatory instruments to establish fair practice by those who had a role in the labour market. Mention may be made in particular of setting common professional codes of conduct for all professionals from the public or private sectors dealing with jobseekers, certification of the profession of employment adviser (in the same way as is done in some countries for translators or accountants), common job classification within the employment service sector and the establishment of social partner-based councils to discuss policy and performance. Both PES and PREA could agree, in a more or less formal way, on common standards of fair practice such as the fair use of appropriate selection tests, vacancy advertisements, interviewing and investigation methods prior to hiring.[8] More generally, this cooperation between PES and PREA could promote effective equality in employment and thereby contribute to the achievement of the objectives of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In this context, mention should also be made of the support which PES and PREA could together give to the objectives of other relevant Conventions such as the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Codes of ethics

Self-regulation may take several forms. In countries with a collective bargaining tradition, agreements between social partners provide an example of regulations endorsed by the public authorities. In other cases, the profession has established its own code of fair practice, which may provide the basis for self-regulation. For example, mention may be made of the code established by the International Confederation of Temporary Work Businesses (CIETT), which states the following:

> Temporary work businesses shall fulfil their legal obligations to their temporary staff in conformity with the usages of the industry, and shall tender good and fair service.
>
> The specific function of temporary work businesses is to place at the disposal of their clients the personnel temporarily required by them. To ensure that this function is fulfilled:
>
> (a) Members shall obtain from clients information about their particular needs.
>
> (b) Before sending temporary staff to a client, members shall take adequate steps to ensure that such staff meet the clients' requirements. All temporary staff shall be interviewed before engagement and tested as required to ensure they meet the clients' needs.
>
> (c) Members shall do nothing to entice away their clients' staff.
>
> Temporary staff shall not knowingly be assigned to work on premises where a labour dispute is in progress unless the authorized representatives of all parties to the labour dispute have been given advance notice of, and are in general agreement with, such assignment.
>
> Temporary staff shall be given full information about the nature of temporary work and, as far as possible, shall be given all important facts regarding the assignment.
>
> Temporary staff shall be paid fair and just wages in accordance with the current local labour market, and shall be paid regularly.
>
> Temporary work businesses shall maintain a high standard in all sales promotion and in public relations activities. They shall not advertise in a manner likely to lower temporary work businesses in the estimation of the public.[28]

Notes

[1] ILO: *The role of private employment agencies in the functioning of labour markets*, Report VI, International Labour Conference, 81st Session, Geneva, 1994, in particular Chapter IV.

[2] United Kingdom: 1973 Act to regulate employment agencies and businesses and Deregulation and contracting out Act, 1994.

[3] Austria: Federal Ministry of Labour and Social Affairs: 1994 Ordinances respecting the supervision of commercial employment agencies.

[4] Germany: Ordinance of 1 August 1994 respecting the collection of statistical data on private employment agencies.

[5] Weinkopf, C., Krone, S.: START Zeitarbeit (Ministry of Labour, Health and Social Affairs of North Rhine-Westphalia, 1995).

[6] ANPE-PROMATTE-UNETT: *Accord cadre de partenariat* (Paris, 1994).

[7] *Liaisons sociales* (Rueil-Malmaison), Legislation sociale, No. 7306, 3 Aug. 1995.

[8] ILO: *The role of private employment agencies in the functioning of labour markets*, op. cit., p. 47; Ruling of the Court of Justice of the European Communities of 19 October 1995 in case C-111/94.

[9] European Commission: "Medium-term social action programme, 1995-97", in *Social Europe*, No. 1/95 (Luxembourg) 1995.

[10] Luxembourg: Act of 19 May 1994 establishing regulations governing temporary work and the secondment of workers.

[1] Takashi Araki: "Characteristics of regulations on dispatched work (temporary work) in Japan", in *Japan Labor Bulletin* (Tokyo, Aug. 1994).

[2] Indonesia: Decree of the Minister of Manpower on the recruitment of workers domestically and overseas, *Business News*, Nos. 5537, 5538, 5539, 5542, Mar.–Apr. 1994.

[3] ILO: *Consumption and investments from migrants' remittances in the South Pacific* (Geneva, Employment and Development Department, 1995).

[4] Bangladesh, Ministry of Labour and Manpower: *A handbook of laws, instructions and circulars for overseas employment of Bangladesh nationals* (Dhaka, 1985).

[5] Nepal, Ministry of Labour: *Manpower recruitment for Nepal* (Kathmandu, 1995).

[6] Bahrain: Legislative Decree No. 14 of 1993 and Ministerial Application Order No. 15 (1994).

[7] Poland: Act of 14 December 1994 respecting employment and the prevention of unemployment.

[8] "Outplacement: l'heure de la mesure", in *Revue du travail* (Brussels), quarterly review of the Ministry of Employment and Labour, No. 13, Jan., Feb., Mar. 1994.

[9] Federal Act of 6 October 1989 respecting employment services and the hiring of services (LSE) and the Ordinance of 16 January 1991 on employment services provide a solid framework for the public and private employment services, although the system is changing rapidly. See: Andersen, A.: *Reforme du service public de l'emploi en Suisse* (Zurich, 1994).

[10] The protection of migrant workers is the subject of the Migration for Employment Convention (revised), 1949 (No. 97), the Migrant Workers' (Supplementary Provisions) Convention, 1975 (No. 143), and the Migrant Workers' Recommendation, 1975 (No. 151), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by the United Nations General Assembly in 1990.

[11] ILO: *Social and labour issues concerning migrant workers in the construction industry*, Tripartite Meeting on Social and Labour Issues Concerning Migrant Workers in the Construction Industry, Geneva, 1995. This report describes the situation and proposes specific measures for the protection of migrant workers in the construction sector.

[12] This is the case in particular in the Netherlands. See various documents of the Tripartite Council: *Scenarios Vergunningenstelsels Arbeidsbemiddeling en Tewerkstellingsvergunningen Arbeidskrachten* (The Hague, 1994).

[13] Canada: Regulation of Ontario 171/94 in conjunction with the Act respecting placement agencies.

[14] Thailand: Notification of the Ministry of Labour and Social Welfare of 24 May 1994, prescribing rate of service and expenses collected from jobseekers.

[15] Mauritius: 1994 Regulation on the recruitment of workers.

[16] The other pertinent instruments in this respect are the Protection of Wages Convention, 1949 (No. 95), and the Protection of Workers' Claims (Employers' Insolvency) Convention, 1992 (No. 173).

[17] ILO: *Record of proceedings*, International Labour Conference, 81st Session, Geneva, 1994, No. 21, paragraphs 39 and 40. Paragraphs 13 and 14 of the Human Resource Development Recommendation, 1975 (No. 150), establish useful guidelines on the use of tests, in particular for vocational guidance.

[18] International Confederation of Temporary Work Businesses (CIETT): *Code of ethics* (London, 1987).

CHAPTER IV

IMPROVEMENT IN THE FUNCTIONING OF LABOUR MARKETS

Profound change in the global economy is having wide-sweeping repercussions on the functioning of labour markets. The demand for goods and services is in upheaval as a result of technological innovations, the expansion of international trade, increased competition on markets and the bringing into line of systems of production. Labour markets are also reeling from the effects of the democratization process, which has had an impact on social and economic institutions. In many countries, the matching of supply and demand in jobs falls far short of an ideal market situation, which is both transparent and flexible, thus paving the way for all sorts of abuse against workers. Be that as it may, worker protection has considerably improved since the time when the first ILO standards were drafted: the social conditions prevailing in most countries are very different from those under which the first fee-charging employment agencies operated. However, a better labour market management is called for and considerable efforts must be made to promote employment. In this context, the monopoly of placement and even the spirit of Convention No. 96 seem to be a remnant of the past. The challenge facing the world today is employment, productivity growth and participation of all workers. In view of the present unemployment and poverty, the main objective has become sustained growth of productive employment and social progress. The labour markets should contribute towards improving economic and social policies and, in so doing, lay the foundations for a new institutional framework.

In a mixed economy, PES rarely succeed in filling more than 25 per cent of vacancies in enterprises. This is true for most OECD countries as well as for countries in transition towards a market economy. In many developing countries, direct recruitment through personal contact is the most common way of filling posts. None

Table 9. Recruitment methods (according to employers' statements) (in percentages)

	[illegible]	[illegible]	[illegible]
PES	41	22	22
PREA	[illegible]	1	8
Newspaper advertisements	22	9	30
Personal contacts	9	19	17
Direct recruitment	24	35	19
Other	4	14	4

Sources and notes: [illegible]

the less, in many cases and in extremely varying economic systems, it is compulsory to announce job vacancies to the PES.

PREA are in a strong position in some areas of activity, such as temporary work; but it is still rare for this type of operation on the labour market to involve more than 1 per cent of workers. However, it is expected that by the year 2000, TWAs will, in some countries such as the United States and the Netherlands, be recruiting 3 or even 5 per cent of workers. Other agencies specializing in services on the labour market are still in their infancy. In the United States, given the present economic conditions, the growth of PREA has been nothing short of remarkable and there is a surprisingly wide range of services; this may be seen as a foretaste of what will happen in other countries later.

Labour market conditions and changes in the status of PREA have in fact put an end to the monopoly of PES.[1] Regulations became noticeably more flexible between 1985 and 1995 and several forms of complementarity between the PES and PREA have emerged. But cooperation between these services is still not very common; a survey carried out in 1994 in 26 countries on developments in the organization of placement services shows that cooperation of this nature is still something of a rarity.[2] Although absolute monopoly has been an exception rather than the rule, the PES and PREA are still often at loggerheads. Neither of the two parties, which have been at variance with each other for years, have succeeded in gaining anything over the other; this situation notwithstanding, it is becoming increasingly difficult to prevent the access of private agencies to the market.

Even if there was a monopoly, the status and activities of private agencies vary so much that it would be impossible to determine which should be banned and which should remain. Logically, in a monopoly situation, all agencies involved in the functioning of the labour market should be banned. This would be tantamount to the death sentence for many small specialist consultancies. If the ban only affected placement offices, it would be easy for agencies involved in different but related activities to circumvent it. If the ban were total, it would have devastating effects: unemployment for the agencies and the obligation to increase the public employment service budget to replace them. And a partial ban would involve the authorities in endless legal actions.

The prohibition approach should therefore be discarded — but the principles of protecting unemployed workers and defending the interests of all those involved in the labour market must be preserved. These are the problems which need to be solved.

Promoting the contribution of all actors to the appropriate functioning of labour markets

At the 81st Session of the Conference in 1994, the discussion on PREA ended in a consensus on the need for PREA to contribute to the improvement of the functioning of labour markets; but the best way of obtaining an optimal contribution from all the actors remains a debatable issue. The Office proposed a shared management model. The general aim of a shared labour market management is to make the market function more efficiently than if it were driven solely by the public service or private agencies. PES and PREA should develop alongside each other and reap the benefits of their respective activities.

The shared management model is the fruit of experience, specific considerations and idealism and it sets out to improve a given situation. It might be defined as a model of active coexistence because it brings together three apparently incompatible concepts: the concept of regulation and supervision (i.e. the State's authority), the concept of competition and the concept of complementarity.

This shared management model was not unanimously approved during discussions of the Committee and several other models were put forward. This chapter will recall the key elements of these proposals, which might provide the basis for a new Convention — as pointed out in the last chapter of this report.

An optimal labour market

Chapter I of this report addressed issues concerning world employment and the functioning of labour markets. From this analysis, it became apparent that there was a common framework within which the actors in the labour market should work to improve the employment situation. In so doing, they would have to abide by certain principles to bring about a better functioning of labour markets. The national authorities may find that these principles — which are taken up here below — help them determine the environment in which employment services function better and in the national interest.

Greater attempts are being made today to involve PREA more closely in programmes to combat unemployment and exclusion. Those who mistrust PREA always point out that the States and social partners are obliged to make amends for the abuses committed by some of them; but, at the same time, there is increasing recognition that PREA can contribute to the promotion of productive employment.

The basic functions of public services

A consensus also seems to have emerged on the functions which the Office put forward as being inalienable and non-transferable for the public services. There are four of these functions:

— the State lays down the general rules of the game, arbitrates and imposes sanctions;

— the State is responsible for formulating labour market policies;

— the State maintains control over public funds committed to financing the implementation of its labour market policy;

— the State maintains control over information about the labour market.

The contribution of registered PREA

The State must respect the sphere of competence of private agencies. The shared management model presupposes a contractual form of agreement between the public and private sectors. It should not be possible to change the terms throughout the duration of the contract and a climate of trust must be created between the public and private sectors.

The authoritarian role hitherto played by the State could become more flexible, more varied and more effective.

The act of supervision may be broken down into three components: subject, object, manner. This may be illustrated by posing three basic questions:

— Who carries out the supervision? This is usually the Minister of Labour. PES should not play this role to avoid being criticized for being both judge and party. Other structures and supervisory means should be developed.

— What should be supervised? In view of the rapid changes the market is undergoing, regulations will become less institutional in their approach and concentrate more on the activities and technical operations of agencies. The advantage of regulating operations rather than agencies lies in increased flexibility and allows for a rapid updating. Regulation could centre on employment management tools and methods used by the private agencies. Provisions could be drawn up to cover the collection and use of data, the compilation and purpose of computerized records, the use of certain selection tests, inquiries, use of the media for advertising job vacancies, etc. Regulations could also define and give official recognition to the profession of employment manager and protect this profession by instituting a professional certification system or by registration in a professional body.

— How is the supervison carried out? Monitoring compliance with legislation should not be the sole approach. Supervision may be carried out indirectly by the State providing encouragement and awarding a "stamp of approval" for self-regulation by federations that group together a number of agencies. Public backing of self-regulation might be secured in two ways:

  — The State could require observance of codes of good conduct as a prerequisite for practising as an employment manager or it could set up joint committees responsible for guaranteeing application of the code and imposing penalties for infringements.

  — The State could also, by setting the example, influence the practices of private agencies.

The State may exert its influence by dialogue and negotiation with professionals in the private sector. Such meetings might result in agreements on definitions, methods, the interpretation of existing provisions or the content of new provisions.

Apart from laws and regulations, the State might employ other methods such as incentives for self-regulation, negotiation, agreements and setting the example. It must decide whether private agencies have to obtain approval or a licence from the public authorities before practising their profession. The setting up of an approval system has advantages: it allows the State to identify and supervise agencies and makes it easier to collect information (if this is part of the approval system). But it also has serious drawbacks: it is costly, constraining, incites firms to claim that the regulations are not applicable to them, generates suspicion between private firms and public authorities and discourages firms from long-term strategies — especially when approval has to be renewed each year. This obligation of approval should be made more flexible and contingent on the way the markets develop and conduct themselves; an immature market must be regulated, unlike a market which is capable of

self-regulation. Approval might thus be reduced to a mere obligation for private firms to register with the public authorities. This registration would make it possible to identify firms and imply an undertaking on their part to abide by the current regulations.

A framework set up with the participation of the social partners

If there is to be an improvement in the functioning of labour markets, there must be a new institutional framework. To date and in many countries, this framework is unilaterally decided upon by the public authorities — and by the PES in particular.

But this set up is being increasingly contested. There is a demand for more efficient direct services both from jobseekers and the employers which is resulting in a decentralization of activities and often providing the local partners with greater scope to tackle the problem of unemployment. When the PES receive fewer requests for placement, they have no option but to change their structure. The Netherlands is a perfect example of the way a system might be changed.[3] During the 1980s, the PES became increasingly ineffective and no longer met the requirements of either the enterprises or jobseekers. The structural changes in the economy called for a greater flexibility than the public employment services in the Netherlands were able to provide. In 1990, the PES radically changed their terms of reference and structure because only a new approach could make them effective. But this situation must be considered in the specific context of the social environment in the Netherlands. This country has a long-standing tradition of social dialogue, consultation and attempts to reach a consensus — but it nevertheless took ten years of negotiations to bring about in-depth changes in the institutional framework. The Employment Service Act of 1990 made the PES independent from the Government. They are now fully tripartite and have a strongly decentralized structure; monopoly on placement has been abolished. In the Netherlands, there have always been many actors in the labour market; not only the social partners, but also the municipal authorities play a very active role. The new approach takes advantage of this spirit of cooperation by putting the PES in the hands of the social partners, which strengthens direct services to clients — the jobseekers and employers. A healthy competition has grown up between the public services and private agencies. Indirectly, this new structure encourages greater cooperation between local activities and national employment promotion policies.

The new PES set up in the Netherlands has indeed given a fresh impetus to the local employment services. However, it is continuing to develop and the social partners must find other ways to bring their action in line with national employment policy. An adjustment must be made to the new strategies for three reasons. First, the position of the government representatives in the new structure has not been entirely cristal clear. It is difficult for the central public services to combine political and financial supervision and participate on an autonomous basis in joint employment promotion programmes. Changes made to the system in 1995 tend to reduce this role of the central services in the implementation of programmes, providing the legislative and executive authorities with stricter supervision. Second, there is increasing pressure on the decentralized structures to encourage worker mobility and the entry of jobseekers into the labour market and to penalize more those who do not participate actively in the Netherlands labour market.[4] A third reason for trying to find new ways

of cooperation lies in the organization of the PES itself." Indeed, the PES must opt for strategies to cope with increasing competition from the PREA. The public services are tending to consolidate their traditional role of placement but, on this account, are often obliged to reduce their assistance to the most difficult cases — such as long-term unemployed. This is in contradiction with the Government's official policy to place the PES at the service of the most disadvantaged members of the community and make them responsible for solving urgent problems in matching supply and demand. It is also difficult for the PES to maintain their institutional contribution to active promotion employment programmes. In addition, public funding of the PES has been considerably cut and earmarked for programmes to help long-term unemployed, under the local authorities. In the Netherlands, the new structure has institutionalized the participation of the social partners in the PES. Although the introduction of this system has been considerably successful, this structure is still developing and being shaped by factors both intrinsic and extrinsic to the functioning of labour markets. A survey published in 1995 predicts that new structural changes will be made to the public employment service in the Netherlands.

Convention No. 96 no longer corresponds to labour market realities

During the 1980s, several trends of thought led to a new definition of the role of the State in relation to the private sector. The objectives were to cut the public scope of action, redefine activities that might be carried out by the private sector, cut state expenditure and increase the effectiveness of both public and private action. Many politicians approved the following division of roles: assistance to jobseekers with difficulties entering employment should fall to the public service, while all the profitable market of job vacancies and employable workers should fall to private agencies. Given that the employers remain the decision-makers in employee recruitment, this division of roles will be prejudicial to the labour market. Indeed, as long as the public employment service providing assistance to less privileged jobseekers does not offer the employers a guarantee of these workers' professional skills and efficiency, employers will remain unaware of the social role expected of them. What is more, the public service will be better able to comply with its social functions if it can, in the same way as a private agency, act as a professional partner vis-à-vis employers.

It is therefore essential that the public authorities recognize the public service as a direct competitor to private employment agencies. Various factors could contribute towards making the market more dynamic: an improvement in the technical capacity of the PES; competition; more institutional reform and a quicker response to the matching of supply and demand. In most countries, there are whole segments of the market which are not covered by the public service, such as high-level executives, temporary work and outplacement. In these cases, which require specific skills and considerable budgets, the public service should enter into competition with the private agencies. The PES should be involved in a wider range of markets, so that these services remain competitive and are better able to serve target populations.

During the discussion on PREA at the 81st Session of the Conference in 1994, most of the members of the Committee on Private Employment Agencies felt that the basic principles of Convention No. 96 no longer corresponded with the situation in

their countries. It felt that Part II of Convention No. 96 appeared to be removed from current practice in most labour markets. The Committee was also convinced that the four recent denunciations of this part of the Convention were only partial evidence of a more general loss of credibility towards the contents of this part of the standard. In its opinion, Part III of Convention No. 96 in a number of respects did not reflect current realities: narrow scope (only the job brokerage service was considered); inflexible type of supervision (only the licensing system was envisaged); constraining (yearly renewal of licenses) or obsolete provisions in regard to current functioning of modern labour markets (notification to supervisory authorities of fees charged to clients). The Committee believed that there was scope for increased cooperation between the PES and PREA. Many PES could not afford to enter into direct competition, even where such competition might be beneficial. PES must, however, endeavour to offer the best range of services possible, in order to ensure that they fulfilled their social duties towards all jobseekers, including the disadvantaged, and offered the common employer a means to satisfy his staffing needs. Labour market cooperation between all the actors would assist in the provision of the broader scope of services. For this relationship to work effectively, the Committee agreed that fee charging by PES would not apply in relation to access to job vacancies."

Services to workers should be free

The principle that jobseekers are entitled to free employment services was upheld at the 81st Session of the International Labour Conference in 1994 although there are several reasons for making an exception to this general rule. Indeed, services have never been entirely free everywhere, even in countries strictly adhering to the spirit of Convention No. 96. For example, services connected to artists' careers are often not free.

It is when envisaging expanding direct services to workers and jobseekers that the principle of free-of-charge services becomes a problem. To be able to guarantee quality services in increasingly varied markets, the PES and PREA concerned will have to be sure that they receive income in return for their efforts; if not, their services will fail to develop very much. This would add a further note of inequality on the labour markets because direct services to employers would be able to develop more under a system that was liberal towards PREA than direct services to workers.

Technical innovations have already undermined the principle of free-of-charge services for workers and jobseekers. Due to advances in communications and data processing, many employment information services are now available for the price of a mere telephone call. This is obviously only a foretaste of things to come and the potential of these services is enormous.

Services might also cease being free as a result of new policies and services. Many countries intend providing basic services free-of-charge, preferably through the PES, but also perhaps in the future with the participation of PREA. For example, in the Netherlands, placement and information will remain free for both workers and employers — but it might be necessary to start paying for additional services, such as specific vocational training.

Towards a closer cooperation between the PES and PREA

The State is feeling increasingly bound not only to provide a public service but to supply this service in accordance with quality, output and efficiency criteria. Many countries have thus embarked on indirect public administration. In this case, and for certain services, the public service calls on private operators acting on their own account in exchange for a comprehensive fee. This shift in approach has encouraged enterprises to outsource their peripheral functions.

Complementarity is an infinitely elastic concept. It may be very narrow or extensive, for example when the public service is in charge of everything except implementation which is entrusted to a private agency.

It may be safely predicted that the public service will make increasing use of complementarity as it offers many advantages: budgetary gains, a cut in the number of officials, the development of a complementary market which can respond to the economic situation and improvements in programmes. From the legal point of view, complementarity between the public service and private firms can take various forms: conventional delegation (or franchise) or subcontracting contracts; subsidies to agencies carrying out missions declared to be for the public good; or the issuing of vouchers entitling the beneficiary to obtain services from specialized private firms approved by the public service. In some countries, such as Australia, Sweden and the United Kingdom, the PES will not launch any programme without first having calculated whether the service could be provided at a lower cost by contracting it out to private operators.

Discussions on the system, general policy or draft legislation or regulations could take place within a tripartite body, on which both employers' and workers' organizations would be represented at inter-occupational level. Representatives of users (enterprises, jobseekers, employees) could also put forward their views on the employment system and discuss the most appropriate methods for regulation.

Furthermore, cooperation on methods and codes of ethics could lead to the setting up of a national employment services council which would constantly seek to upgrade services and serve as a sort of self-regulatory mechanism for the occupation. By bringing together the public and private services (and thus guaranteeing the representation of workers in this sector), the council would act as a forum to generate progress and guarantee credibility of the profession.

The development of quality relations between the PES and PREA

There are numerous activities the State can contract out to private firms. In many countries, even those with a monopoly situation, this is already common practice in areas such as vocational retraining programmes, training programmes for the long-term unemployed, skills upgrading, retraining courses and job traineeships. There are many who advocate an even wider use of indirect management of employment — including, in some cases, placement. For instance, the public service could pay private agencies a subsidy for each successful placement of a long-term unemployed worker (Australia) or for each hour of service (Switzerland).

Various forms of cooperation may be set up between the public service and private agencies. For instance, the public service, private agencies and trade union representatives could use the national employment services council as a forum for

dialogue and reach agreements as a substitute for legislation; the council could also sponsor surveys and congresses. Similarly, the public service and private agencies could establish a common nomenclature of employment professionals, decide upon the training, experience and standards of conduct required of practitioners and jointly run a professional association to confer status, protection and credibility on the profession. A guarantee of this nature would be considered more effective than conventional contracts. Standards on professional practices could also be established (such as selection tests).

Cooperation could be extended to the settlement of disputes. A body such as the national employment services council could identify the grounds for dispute, prevent the situation from becoming worse and put forward lasting solutions in the form of regulations or agreements between the parties.

Exchange of information

As the Committee pointed out during discussions on PREA at the 81st Session of the Conference in 1994, exchange of information was vital to ensure more efficient cooperation between the PES and PREA. It stressed that cooperation between public institutions and private employment firms was not normally established by law. It was rather the result of tradition, administrative culture and behaviour by all actors in the labour market. The Committee nevertheless noted that measures could be taken by governments to promote cooperation. For example, the practice of using private firms to implement labour market schemes could lead to more and better cooperation. Similarly, the decision to advertise vacancies in each other's premises or to allow mutual access to computerized vacancy files could also be conducive to improved working relations. In some countries, inviting staff from PREA to specialized training or seminars conducted by PES could develop a spirit of cooperation and understanding. Exchanging staff or sharing premises could be other unconventional and efficient ways of building beneficial personal contacts among staff of both organizations.

In general, it was agreed that cooperation could best be achieved when the PES recognize its value and coordinated with PREA to build the broadest possible spectrum of programmes.

For some countries a network of PREA complementing the activities of the PES could best be established through joint planning, delegation of specific duties and sharing of information.[7]

The regulation and development of the skills of agency staff

Any improvement in the governance[8] of labour markets will be contingent upon the increased competence of employees in the agencies. In many countries, the training and expertise of these agents is not a priority. For example, it is still rare to find regulations stipulating professional criteria — as is the case in Germany and Australia. However, the situation is changing. Some countries have made the liberalization of PREA subject to the competence of their executives. For example, in Austria the competent authority requires proof of the skills of staff working for PREA. In return, the public services are authorized to provide training assistance to the PREA concerned.

In the case of temporary work agencies, the training of workers made available to user enterprises remains a constant problem. For these agencies and other suppliers of labour, their workers' skills are their main asset. Many of these agencies take considerable pains to upgrade constantly the technical expertise of workers. In some countries, for example the Netherlands, training is a matter for collective bargaining; in other countries, such as France, the employers are bound by law to participate in the training of their staff.

Until now, the International Labour Office has done little to contribute to the skills development of private employment agencies. At the outset, ILO assistance in this sector was generally of a standard-setting nature; it then took the form of direct contacts between Office officials and representatives of employers and workers. The revision of Convention No. 96 provides a good opportunity to identify areas in which the ILO could help private employment agencies attain a better governance of labour markets, whilst guaranteeing the necessary protection for the workers concerned.

Notes

[1] ILO: *The role of private employment agencies in the functioning of labour markets*, Report VI, International Labour Conference, 81st Session, Geneva, 1994 (in particular Chapter VI).

[2] U. Walwei: *Developments in the organization of placement services* (ISSA, Florence, 1994).

[3] OECD: *The labour market in the Netherlands* (Paris, 1993).

[4] Netherlands, Ministry of Social Affairs and Employment: *Social memorandum 1995* (The Hague, 1994).

[5] W. J. Derksen: "Arbeidsvoorziening: Mission impossible?", ESB (Rotterdam), 13 July 1994.

[6] ILO: *Record of proceedings*, International Labour Conference, 81st Session, Geneva, 1994 (pp. 30-31).

[7] Ibid., p. 30.

[8] See note 4 in the Introduction.

CHAPTER V

ARGUMENTS IN FAVOUR OF A NEW INTERNATIONAL INSTRUMENT

BACKGROUND AND CONTEXT

When examining the background of the Fee-Charging Employment Agencies Convention and its revisions, it becomes clear how difficult it is to promote the protection of all workers, including jobseekers, by making them subject to a strict system which places an overall ban on employment agencies. This is precisely what was proposed in 1933 and even 1949 with respect to the participation of the private sector in placement.[1]

Although Convention No. 96 does not stipulate an absolute ban on private agencies, it does not exactly encourage their participation; it consolidates the application of Convention No. 88 by the monopoly of the public and free employment service. A suggestion at a subsequent session of the Conference to amend a Convention that had already been adopted was not taken lightly.[2] It is to the great credit of the Conference, backed subsequently by the Governing Body, that it had the wisdom and courage, at its 81st Session (1994), to set this process in motion; but it is up to the 85th Session of the Conference in 1997 to decide on the contents of the new instrument or instruments.

At the Conference in 1994, the Committee on Private Employment Agencies not only put forward arguments for a revision but also reached a consensus that there should be a new approach to employment services.[3] At this same session, the Conference adopted a resolution on these lines upholding without change the conclusions of the Committee on Private Employment Agencies. This considerably strengthened the case of those advocating a new instrument or instruments. Of course, this merely confirms what many observers of labour markets have been saying for decades; i.e. that the situation today is different from that before 1950. And both workers and employers need a new set of references to confront the challenges of the twenty-first century. What is particularly significant is that the governments and social partners were able to come up with a new framework at the 81st Session of the Conference. This report tends to corroborate that recent developments in the law and practice of member States are comparable with the guidelines advocated in 1994. Consequently, the questionnaire was drawn up to clarify better this framework for the new Convention. Given the importance of a revised instrument to be able to cope with constantly changing circumstances in labour markets, it would be advisable to envisage supplementing this Convention by a Recommendation to provide for a clear and structured framework while allowing a certain flexibility to take account of national conditions;[4] the Recommendation could contain, if need be, specific provisions concerning PREA services.

In accordance with Article 24 of Convention No. 96, the ratification of a new Convention to revise this Convention in whole or in part would involve — unless the new Convention provides otherwise — the immediate denunciation of Convention No. 96, if and when the new revising Convention comes into force. As from that date, Convention No. 96 would cease to be open to ratification. The same provisions are contained in Article 13 of the Fee-Charging Employment Agencies Convention, 1933 (No. 34), which is in force for five members. The final provisions of any new Convention adopted on the subject must include identical stipulations, i.e. that the ratification of a new Convention would involve an automatic denunciation of Conventions Nos. 34 and 96. The latter would, however, remain in force for any members not having ratified the new Convention.

The revised standard

The labour market is in the midst of an upheaval and the reasons for this are well known. The technological breakthroughs of the last decades, especially in communications, have set in motion the process of globalization and a race against time to achieve the most successful market economy. Tomorrow's world will be one of instant communications. However, the labour market is finding it extremely difficult to keep up with this development. For the great majority of workers, the global labour market does not exist. More than ever before, labour markets are cut off from each other for a multitude of reasons. This is of no surprise to the ILO which has always stated that labour is not a mere factor of production or a commodity.

In the new context of the world economy, the functions of the labour market are changing. Job vacancies are being affected by changes in the order books of enterprises which, to survive, need greater flexibility in the allocation of human resources. At the same time, the employers' demand for labour increasingly reflects the higher skills required of workers and the complexity of new jobs. The supply of jobs is also becoming more and more diversified — both in terms of quantity and quality. This development is affecting all countries and is liable to have very serious social repercussions, such as the social exclusion of certain groups.

Given these far-reaching changes in the supply of and demand for jobs, it is scarcely surprising that the matching of these two economic and social forces is becoming increasingly difficult. This process is falling short because, more than ever, the prerequisites for the appropriate functioning of labour markets are lacking. The main actors — both workers and employers — are badly informed; abuses of all kinds, affecting all the actors, are on the increase. It is against this background that an analysis should be made not only of the functions of the market as such but also of the political objectives being set. Today, governments are tending to react by turning away from a monopoly situation and to try to improve the efficiency and functioning of the labour markets. Admittedly, this strategy might improve competition but it also undermines fair market practices. It not only affects the workers but also carries the risk that good employers will be "driven out" by the bad. Employment today reflects the lack of vision of yesterday's politicians. The new international instrument or instruments should serve in some way as bastions of the labour market.

The new standard sets out to attain much more than the protection of workers against abuse, which is the aim of Convention No. 96; it also covers employment, the protection of employers as well as that of workers and promotes a better functioning of

the labour market. This objective requires the collaboration of all the actors on the very many labour markets — and first and foremost of the public and private employment services. Convention No. 96 is outdated, not only because it fails to recognize the role of PREA but because it does not provide adequate protection against abuse.

New concepts and definitions

Private employment agencies could be defined as natural or legal persons, independent of the public administration which, directly or indirectly, participate in the labour market in order to provide an employment service. The functions of these agencies may be divided up into three categories: mediation, the provision of skills and the supply of direct employment services. An intermediary may be defined as a PREA which provides services for matching demand and supply without the agency becoming a party to the employment relationship. The provider of skills may appoint a PREA which provides services consisting of recruiting workers, who are employees of the agency, with a view to making these workers available to a natural or legal third party user who assigns their tasks and supervises the execution of these tasks. A supplier of direct services may be defined as a PREA which provides services such as training, provision of information or any other employment-related services that are provided without seeking to match specific supply and demand.

On a day-to-day basis, it will be increasingly common for private employment agencies to supply various services to jobseekers and other workers, as well as to enterprises and other clients. It is for this reason that the questionnaire enclosed with this report uses a more detailed definition of these activities: a private employment agency means any natural or legal person, independent of the public administration, which provides one or more of the following labour market services:

(i) services for matching demand and supply without the agency becoming a party to the employment relationship;

(ii) services consisting of recruiting workers, who are employees of the agency, with a view to making these workers available to a natural or legal third party user who assigns their tasks and supervises the execution of these tasks;

(iii) services such as training, provision of information or any other employment-related services that are provided without seeking to match specific supply and demand.

The spirit and objectives of the new envisaged standard

The basic difference between the system advocated in Convention No. 96 and the envisaged standard is that governments would authorize and encourage the growth of PREA — provided that these agencies accept to cooperate with the competent authority. It would recognize PREA as actors on the labour market and as partners, on condition that they complied with the general interest as regards the appropriate functioning of this market and the respect of labour laws and regulations. It would therefore be up to the public authorities to ensure that the agencies operated within the framework of legislation, regulations and collective agreements in force. The institutional framework will depend upon national conditions and practice. The social partners have an important role to play in establishing this framework and,

consequently, in determining the legal rules to be adopted nationally. The nature of these rules, which will have to be relevant to the national market situation, will be contingent upon the maturity of the actors, demonstrated by their behaviour on the labour market. If a specific system for PREA is deemed necessary, it might take various forms according to the market's level of development. In a market which is little developed or where there was a high risk of serious abuse by certain agencies, governments might have to adopt a strict licensing system. In certain branches of activity particularly renowned to be open to abuse, governments might even ban the operations of PREA or certain types of agencies. However, in a competitive market at the peak of development, they might be left more or less to regulate themselves. Between these two extremes, there are a number of intermediary solutions. It is up to the governments, in close collaboration with the social partners and the PREA, to adapt the system to developments in the functioning of the market. The public employment service, under the terms of Convention No. 88, should also develop according to the requirements of the functioning of the labour market. The governments must decide the way in which this public service, in the wide sense of the term, should contribute to the objectives of an appropriate functioning of the labour market. A recognition of PREA as full partners should prompt them to reconsider the role of PES in local labour markets. Consequently, the objectives of the proposed standard could be summarized as follows:

(i) to establish a new institutional framework for the functioning of the labour market, acknowledging the contribution that PREA might make to the improvement of this functioning;

(ii) to provide adequate protection against abuse;

(iii) to improve relations between all the actors on the labour market and, first and foremost, establish efficient cooperation between the PES and PREA.

Protection against abuse

A vital aim of the proposed standard is to protect labour markets against poor and unethical practices and safeguard workers' interests, in situations when industrial relations might be affected by PREA practices.[5] A number of services provided by PREA are particularly open to abuse such as, for example, placement abroad.[6]

It is particularly difficult to avoid abuse when there is a legally uncertain situation as regards private employment agencies. In this respect, the universal principles contained in the proposed standard would contribute considerably towards filling these gaps at national level. But the pitfall of over-regulation or even a general ban should be avoided: indeed, the example of Convention No. 96 has clearly shown the failure of such an approach.

To avoid flagrant abuse, the principle of free-of-charge services of the agencies for jobseekers should be retained and exceptions to this principle clearly specified. These exceptions should be determined nationally, after consultation with the workers and employers concerned. Labour markets and technologies are developing rapidly and an increasing number of workers, including jobseekers, are able to use sophisticated means of information and carry out research on jobs. Access to databanks is not free but it is an efficient and relatively cheap way of obtaining information. Opportunities for abuse inherent in this system differ considerably from those involved in the former

system of brokerage. Consequently, the free-of-charge principle might be contained in the new standard but with possibilities of exception for certain services, to be specified by law or regulations.

The sharing and distribution of personal data might also provide PREA with possibilities to commit abuse. Practical guidelines on the protection of workers' personal data are still a rarity; a universal principle on this matter in the revised standard might be of considerable value for jobseekers. Furthermore, in view of the rapid progress of technology in this area, employers and enterprises also no doubt need protection of their data.

Given that PREA are likely to expand rapidly, it would be advisable to forestall any discrimination in the area of employment and occupation. As this issue concerns all the services provided by these agencies, a provision to this effect should be contained in the new Convention. Indeed, both PES and PREA could make a vital contribution to the application of the provisions contained in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), as well as to any policy promoting equality of opportunity and treatment in employment.

The prevention of other abuses mainly involves certain types of activities and PREA. First and foremost, there could be violation of freedom of association if an agency provided workers to an enterprise during a labour dispute. In markets which have attained full development, these abuses have been practically eliminated thanks to the efforts of the social partners. However, the danger is real in other countries and several members might need an international instrument to improve conditions in this segment of the market.

There is also a risk of abuse when workers are in the service of several employers; indeed, it should be determined in advance which of these employers will assume responsibilities towards a worker if another employer defaults. Disputes of this nature are not very common because responsibilities are usually clearly defined — but it is vital to provide for measures such as protection concerning workers' claims, working hire and access to social security.

Advertisements and selection tests are another area where numerous abuses are committed by various types of PREA. In many countries, the publication of false advertisements or requests for fictitious jobs or work are commonplace. For unscrupulous agents profiting from the misfortunes of jobseekers, this is one way of setting up a business; and honest PREA pay for the behaviour of these agents. The same applies to certain methods of staff selection. Jobseekers are the first to fall victim to the use of invalidated tests and other deplorable practices in this area. The proposed standard should back the efforts of governments and employers' and workers' organizations to do away with these practices.

A final example where specific protection might be useful is that of constraints imposed on mobility. Abuses might arise when an employment relationship is accompanied by clauses restricting the possibilities of the worker or employer concerned to sign a subsequent labour contract. These constraints undermine the functioning of the labour market and their suppression might be backed by an international instrument.

Relations on the labour market

The appropriate functioning of a labour market is conditioned by its degree of transparency, by the rapidity with which the supply and demand of jobs are matched and by its capacity to adapt to and anticipate future economic trends. All these factors determine the contribution of the labour market to productive and freely chosen full employment. It goes without saying that this functioning is contingent upon the relations between the various actors on the labour market; consequently, the active partnership between all the employment services has become a major asset. The complementarity and cooperation between the PES and PREA to promote employment should therefore feature prominently in the revised standard.

Good relations on the labour market also depend on the role played by the competent authority of the public employment service, in accordance with the provisions of Convention No. 88. In this respect, it should be specified that the definition, implementation and assessment of labour market policies remains the responsibility of the competent authority, as does the use of public funds earmarked for the promotion or creation of jobs. Concerning the organization and dissemination of information on the labour market as a whole, PREA could cooperate in a useful way and provide key information on their activities to the competent authority.

Apart from the functions reserved for the competent authority, the PES could also carry out their duties in cooperation with PREA. The nature and extent of this cooperation is contingent upon the maturity of the labour market, the competence of the respective services and the type of complementarity. Considerable experience has already been acquired in this area and it would perhaps be relevant to refer to this when formulating the Recommendation. In certain cases where their skills, level of specialization and efficiency are recognized, PREA could also provide services for the PES and under their supervision — either under an agreement or in exchange for a fee for each service rendered.

To encourage the efficient contribution of all actors to the appropriate functioning of the labour market and improve the quality of their relations, it would be useful to establish an institutional framework so that the public and private services involved in the same activities should be subject to the same regulations. In the best tradition of tripartism, this framework could take the form of a national council. This employment services' authority could be entrusted with the responsibility for the implementation of a national policy on organizing the labour market and would contribute much to the application of Convention No. 88 and the new proposed standard; above all it would help towards the promotion of employment and a better governance[3] of the labour market.

QUESTIONNAIRE

The approach which will mark the revision of Convention No. 96 at the 85th Session of the International Labour Conference in 1997 will, in part, be linked to the replies to the questionnaire enclosed in this report. The form and content of this questionnaire have taken into account the conclusions adopted by the Committee on Private Agencies at the Conference in 1994. For economy reasons, the texts of Convention No. 88, Recommendation No. 83 and their relevant instruments such as Convention No. 97 have not been included. The texts of Convention No. 88 and

Recommendation No. 83 may be consulted in the report submitted to the 81st Session of the Conference in 1994.[7]

Notes

[1] ILO: *Abolition of fee-charging employment agencies*, Report I, International Labour Conference, 17th Session, Geneva, 1933; *Revision of the Fee-Charging Employment Agencies Convention, 1933 (No. 34)*, Report X (1), International Labour Conference, 32nd Session, Geneva, 1949.

During discussions on the proposed revision of the Fee-Charging Employment Agencies Convention at the 31st Session of the International Labour Conference in 1948, the United States Government member said that, although he was unable to accept the principle of abolition of profit-making agencies, he believed that it would be dangerous for the whole work of the International Labour Organization if a Convention once adopted should be completely reversed at a later session of the Conference (Report X (1), op. cit., p. 10).

[2] ILO: *Record of Proceedings*, International Labour Conference, 81st Session, Geneva, 1994, No. 21.

[3] The Committee on Private Employment Agencies retained this principle as an objective of the revised standards; see *Record of Proceedings*, op. cit.

[4] ILO: *Record of Proceedings*, op. cit., p. 31.

[5] A question concerning migrant workers has been included in the questionnaire under the heading "Special problems". See also note 21 to Chapter III.

It is relevant to recall the difficulties involved in the application of the Fee-Charging Employment Agencies Convention, 1933 (No. 34), which led to its revision by Convention No. 96. In 1940, the Swedish government referred to the constraints imposed by Convention No. 34 on placement and recruitment of workers abroad, particularly artists.

[6] See note 4 in the Introduction.

[7] *The role of private employment agencies in the functioning of labour markets*, Report VI, International Labour Conference, 81st Session, Geneva, 1994.

QUESTIONNAIRE

In accordance with article 38 of the Standing Orders of the International Labour Conference, governments are requested to consult the most representative organizations of employers and workers before finalizing their replies to the following questionnaire and to give reasons for their replies. The replies are to reach the International Labour Office in Geneva by 30 June 1996 at the latest.

The structure of the questionnaire is based on the premise that the new instruments will be a Convention supplemented by a Recommendation.[1] Because of this supposition, most of the questions are divided into separate sections concerning the content of the proposed Convention and of a possible Recommendation. If you wish to move a proposed provision to the other instrument, please indicate this and explain why.

In preparing their reply, governments should bear in mind that contract labour will also be on the agenda of the 84th Session of the International Labour Conference and they should therefore take into account the need to ensure consistency in any instruments adopted on these two matters.

I. Form of the international instrument or instruments

1. Should the International Labour Conference adopt a Convention concerning the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)?

2. If so, should the International Labour Conference also adopt a Recommendation, supplementing the Convention revising Convention No. 96?

II. Preamble

3. (1) Should the Convention contain a preamble which refers to:

(a) the existing Convention No. 96?

(b) the very different environment in which private employment agencies presently function?

(c) the role which they may play in a well functioning labour market?

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[1] An agenda item of the 85th Session of the International Labour Conference (1997) is the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96); a Convention can be revised only by another Convention, which may or may not be supplemented by a Recommendation. For this reason, the option of having a Recommendation only has not been put forward. It should be taken into account that the Governing Body has decided that the agenda item is to be governed by the single-discussion procedure.

(d) the need to protect workers against possible abuses?

(e) the Employment Service Convention, 1948 (No. 88)?

(2) Should the preamble mention other relevant instruments? If so, which ones?

III. Definition and scope of application

4. For the purposes of the instrument or instruments:

(a) Should the term "private employment agency" mean any natural or legal person, independent of the public administration which provides one or more of the following labour market services:

(i) services for matching demand and supply without the agency becoming a party to the employment relationship;

(ii) services consisting of recruiting workers, who are employees of the agency, with a view to making these workers available to a natural or legal third party user who assigns their tasks and supervises the execution of these tasks;

(iii) services such as training, provision of information or any other employment-related services that are provided without seeking to match specific supply and demand?

(b) Should the term "private employment agency" exclude entities providing employment-related services only incidentally to their main activity, such as:

(i) media or information networks?

(ii) educational institutions?

(iii) trade unions?

(c) Should the term "workers" include jobseekers?

5. Should the instrument or instruments cover all workers and all branches of economic activity and occupations?

6. (1) Should the Convention provide that, where appropriate, the competent authority, after consultation with the most representative organizations of employers and workers, could exclude certain branches of economic activity or occupations, such as seafarers,[1] port workers, artists or high level professional staff, from its scope of application?

(2) If so, should the Convention provide that each ratifying Member should indicate, in its first report on the application of the Convention to be submitted in accordance with article 22 of the Constitution of the International Labour Organization, these exceptions proposed, together with the reasons for them?

[1] This could be the case in particular for a Member having ratified the Placement of Seamen Convention, 1920 (No. 9), or another international instrument on this subject.

IV. Questions concerning the proposed Convention

General provisions

7. (1) Should the Convention provide that a Member should:

(a) apply legal rules of general applicability to all types of services provided by private employment agencies; or

(b) have legal rules specifically applicable to certain types of services provided by them; or

(c) both (a) and (b)?

(2) For each type of service mentioned in question 4 (a), should the legal rules take the form of:

(a) a licence (if so, please specify intervals for renewal)?

(b) a referral to internal rules or a code of ethics for the profession?

(c) a referral to an agreement between the competent authority and private employment agencies?

(d) other? Please specify.

(3) Should the Convention provide that the competent authority could, after consultation with the most representative organizations of employers and workers concerned, prohibit the establishment or the functioning of a private employment agency in certain branches of economic activity or in respect of certain categories of persons, as defined by national legislation? If so, please specify.

8. Should the Convention provide that it does not affect more favourable provisions applicable to workers under other international labour Conventions?

Protection of workers

9. Should the Convention provide that the competent authority should ensure that private employment agencies do not charge, directly or indirectly, in whole or in part, any fees or costs to workers for placement services?

10. (1) Should the Convention provide that the competent authority should take measures to ensure that workers are being treated without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin by private employment agencies, in order to promote equality of opportunity and treatment in access to employment and occupations? Please specify these measures.

(2) Should the Convention include other cases of discrimination for which there should be protection? Which ones?

11. Should the Convention provide that a Member should specify the respective responsibilities of private employment agencies and the user enterprises with regard to the following subjects:

(a) freedom of association?

(b) training?

(c) working time and other working conditions?

(d) health and safety at work?

(e) compensation in case of occupational accident or disease?

(f) coverage by collective agreements?

(g) safeguards in respect of the protection of workers' claims?

(h) others? (Please specify)

12. (1) Should the Convention provide that the competent authority should take measures to ensure that all processing of personal data of workers, including the collection, storage, combination, communication or any other use which could be made of these data by private employment agencies, is done in accordance with national laws and regulations concerning the protection of personal data?

(2) Should the Convention provide that, in the absence of national laws and regulations on the subject, specific measures should be taken to protect against abuse in regard to personal data of workers? Please specify these measures.

13. Should the Convention provide that a Member should put in place appropriate mechanisms and procedures in order to examine, where necessary, complaints against activities of private employment agencies?

14. (1) Should the Convention provide that the effective application of legal rules applicable to private employment agencies should be ensured by means of labour inspection?

(2) Should the Convention provide that adequate remedies, including penalties, should be provided for in case of infringements of the legal rules and effectively applied?

Relationships between the public employment service and private agencies

15. Should the Convention provide that a Member should promote, in consultation with organizations of employers and workers, complementarity and cooperation between the public employment service and private employment agencies?

16. Should the Convention provide that specific measures be taken for establishing this complementarity and cooperation? If so, please specify.

17. In order to ensure the adequate functioning of the labour market, should the Convention provide that, in relevant cases, the public authorities should retain exclusive authority for:

(a) formulating labour market policy?

(b) utilizing or controlling the use of public funds earmarked for the implementation of that policy?

(c) collecting and distributing information on the overall situation of the labour market?

(d) other areas? (Please specify.)

18. Should the Convention provide that private employment agencies should, at regular intervals, supply detailed information to the competent authority in respect of:

(a) their location, structure and staff?

(b) the types of services provided?

(c) the number and the distribution of placements made and of services provided?

(d) other data? (Please specify.)

19. Have you any other proposals regarding information in support of improved functioning of the labour market?

20. Should the Convention provide that its provisions should be given effect by laws or regulations or any other method consistent with national practice?

V. Questions concerning a possible Recommendation

General provisions

21. In order to improve the contributions of private employment agencies to the functioning of the labour market, do you have suggestions in respect of each type of services mentioned in question 4 (a)? If so, please specify.

Protection of workers

22. Should the Recommendation provide that the competent authority should combat unfair advertising practices such as misleading advertisements for non-existent jobs?

23. Should the Recommendation identify protective measures other than those mentioned in questions 9 to 14? If so, please specify.

24. Should the Recommendation provide that the measures referred to in question 10 could include:

(i) a ban on drawing up vacancy notices or job offers in ways that, directly or indirectly, result in discrimination on grounds prohibited under the Convention?

(ii) a ban on recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered?

25. Should the Recommendation provide that the competent authority should take measures to promote the utilization of adequate selection methods by private employment agencies? Please specify these measures.

26. Should the Recommendation provide that at the end of the assignment of an employee made available to the user, a private employment agency should not prevent:

(a) the user enterprise from hiring the employee?

(b) the employee from accepting a contract from the user?

RELATIONSHIPS BETWEEN THE PUBLIC EMPLOYMENT SERVICE AND PRIVATE AGENCIES

27. (1) Should the Recommendation provide that the competent authority should specify the different means for establishing the complementarity between the public employment service and private employment agencies, such as:

(a) pooling of labour market information?

(b) division of markets?

(c) launching of joint projects, for example in training?

(d) subcontracting of certain projects by the public employment services to private employment agencies, such as for the integration of the long-term unemployed?

(e) training of staff?

(f) exchanges of vacancies?

(g) sharing of offices?

(h) participation in committees or councils?

(2) Please specify other possible means.

28. (1) Should the Recommendation provide that a national authority should be entrusted with the responsibility for the implementation of a national policy on organizing the labour market and for the respective contributions of the public employment service and private employment agencies?

(2) If so, should this national authority take the form of a council with the participation of representatives from the public employment service and from private employment agencies as well as from the most representative organizations of employers and workers?

29. (1) Should the Recommendation provide measures for enhancing the contributions of private employment agencies to the adequate functioning of the labour market, in respect of:

(a) the protection of workers?

(b) the protection against long-term fragmentation of the labour market?

(c) the promotion of employment?

(d) other objectives? (Please specify.)

(2) If so, which measures?

30. In order to improve the functioning of the labour market, should the Recommendation provide that the competent authority should, taking into account national conditions, promote a policy of self-regulation by private employment agencies?

31. Should the Recommendation provide measures concerning the required qualifications and training for the management and staff of private employment agencies?

32. (1) Should the Recommendation include measures for promoting the exchange of information and experience among Members on contributions from private employment agencies to the functioning of the labour market? If so, please specify these measures.

(2) Do you consider that the International Labour Office should provide assistance in the exchange of information and in the sharing of experience? If so, please specify.

VI. Special problems

33. Taking into account the existence of the Migration for Employment Convention (Revised), 1949 (No. 97); and of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), should the new instrument(s) provide that a Member should take specific measures for protecting migrant workers recruited by private employment agencies?

34. (1) Are there any particularities of national law or practice which, in your view, are liable to create difficulties in the practical application of an international instrument or instruments as conceived in this questionnaire?

(2) If so, how would you suggest that these difficulties be met?

35. (Federal States only.) Do you consider that, in the event of a Convention being adopted, the subject-matter would be appropriate for federal action or wholly or in part for action by the constituent units of the federation?

36. Are there, in your view, any other pertinent problems not covered by the present questionnaire which ought to be taken into consideration when the instrument or instruments are being drafted? If so, please specify.

ANNEXES

ANNEX I

SUBSTANTIVE PROVISIONS OF THE FEE-CHARGING EMPLOYMENT AGENCIES CONVENTION (REVISED), 1949 (No. 96)[1]

PART I. GENERAL PROVISIONS

Article 1

1. For the purpose of this Convention the expression "fee-charging employment agency" means —

(a) employment agencies conducted with a view to profit, that is to say, any person, company, institution, agency or other organisation which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers;

(b) employment agencies not conducted with a view to profit, that is to say, the placing services of any company, institution, agency or other organisation which, though not conducted with a view to deriving any pecuniary or other material advantage, levies from either employer or worker for the above services an entrance fee, a periodical contribution or any other charge.

2. This Convention does not apply to the placing of seamen.

Article 2

1. Each Member ratifying this Convention shall indicate in its instrument of ratification whether it accepts the provisions of Part II of the Convention, providing for the progressive abolition of fee-charging employment agencies conducted with a view to profit and the regulation of other agencies, or the provisions of Part III, providing for the regulation of fee-charging employment agencies including agencies conducted with a view to profit.

2. Any Member accepting the provisions of Part III of the Convention may subsequently notify the Director-General that it accepts the provisions of Part II; as from the date of the registration of such notification by the Director-General, the provisions of Part III of the Convention shall cease to be applicable to the Member in question and the provisions of Part II shall apply to it.

PART II. PROGRESSIVE ABOLITION OF FEE-CHARGING EMPLOYMENT AGENCIES CONDUCTED WITH A VIEW TO PROFIT AND REGULATION OF OTHER AGENCIES

Article 3

1. Fee-charging employment agencies conducted with a view to profit as defined in paragraph 1 (a) of Article 1 shall be abolished within a limited period of time determined by the competent authority.

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[1] Date of entry into force: 18 July 1951.

2. Such agencies shall not be abolished until a public employment service is established.

3. The competent authority may prescribe different periods for the abolition of agencies catering for different classes of persons.

Article 4

1. During the period preceding abolition, fee-charging employment agencies conducted with a view to profit —

(a) shall be subject to the supervision of the competent authority ; and

(b) shall only charge fees and expenses on a scale submitted to and approved by the competent authority or fixed by the said authority.

2. Such supervision shall be directed more particularly towards the elimination of all abuses connected with the operations of fee-charging employment agencies conducted with a view to profit.

3. For this purpose, the competent authority shall consult, by appropriate methods, the employers' and workers' organizations concerned.

Article 5

1. Exceptions to the provisions of paragraph 1 of Article 3 of this Convention shall be allowed by the competent authority in exceptional cases in respect of categories of persons, exactly defined by national laws or regulations, for whom appropriate placing arrangements cannot conveniently be made within the framework of the public employment service, but only after consultation, by appropriate methods, with the organisations of employers and workers concerned.

2. Every fee-charging employment agency for which an exception is allowed under this Article —

(a) shall be subject to the supervision of the competent authority ;

(b) shall be required to be in possession of a yearly licence renewable at the discretion of the competent authority ;

(c) shall only charge fees and expenses on a scale submitted to and approved by the competent authority or fixed by the said authority ;

(d) shall only place or recruit workers abroad if permitted to do so by the competent authority and under conditions determined by the laws or regulations in force.

Article 6

Fee-charging employment agencies not conducted with a view to profit as defined in paragraph 1 (b) of Article 1 —

(a) shall be required to have an authorization from the competent authority and shall be subject to the supervision of the said authority ;

(b) shall not make any charge in excess of the scale of charges submitted to and approved by the competent authority or fixed by the said authority, with strict regard to the expenses incurred ; and

(c) shall only place or recruit workers abroad if permitted so to do by the competent authority and under conditions determined by the laws or regulations in force.

Article 7

The competent authority shall take the necessary steps to satisfy itself that non-fee-charging employment agencies carry on their operations gratuitously.

Article 8

Appropriate penalties, including the withdrawal when necessary of the licences and authorisations provided for by this Convention, shall be prescribed for any violation of the provisions of this Part of the Convention or of any laws or regulations giving effect to them.

Article 9

There shall be included in the annual reports to be submitted under article 22 of the Constitution of the International Labour Organization all necessary information concerning the exceptions allowed under Article 8, including more particularly information concerning the number of agencies for which such exceptions are allowed and the scope of their activities, the reasons for the exceptions, and the arrangements for supervision by the competent authority of the activities of the agencies concerned.

PART III. REGULATION OF FEE-CHARGING EMPLOYMENT AGENCIES

Article 10

Fee-charging employment agencies conducted with a view to profit as defined in paragraph 1 (a) of Article 1

(a) shall be subject to the supervision of the competent authority;

(b) shall be required to be in possession of a yearly licence renewable at the discretion of the competent authority;

(c) shall only charge fees and expenses on a scale submitted to and approved by the competent authority or fixed by the said authority;

(d) shall only place or recruit workers abroad if permitted so to do by the competent authority and under conditions determined by the laws or regulations in force.

Article 11

Fee-charging employment agencies not conducted with a view to profit as defined in paragraph 1 (b) of Article 1

(a) shall be required to have an authorisation from the competent authority and shall be subject to the supervision of the said authority;

(b) shall not make any charge in excess of the scale of charges submitted to and approved by the competent authority or fixed by the said authority with strict regard to the expenses incurred; and

(c) shall only place or recruit workers abroad if permitted so to do by the competent authority and under conditions determined by the laws or regulations in force.

Article 12

The competent authority shall take the necessary steps to satisfy itself that non-fee-charging employment agencies carry on their operations gratuitously.

Article 13

Appropriate penalties, including the withdrawal when necessary of the licences and authorisations provided for by this Convention, shall be prescribed for any violation of the provisions of this Part of the Convention or of any laws or regulations giving effect to them.

Article 14

There shall be included in the annual reports to be submitted under article 22 of the Constitution of the International Labour Organization all necessary information concerning the

arrangements for supervision by the competent authority of the activities of fee-charging employment agencies including more particularly agencies conducted with a view to profit.

PART IV. MISCELLANEOUS PROVISIONS

Article 15

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organization any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of the present Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of the present Article.

PART V. FINAL PROVISIONS

Articles 16, 17 and 20-25. Standard final provisions.

Articles 18, 19. Declarations of application to non-metropolitan territories.

ANNEX II

LIST OF RATIFICATIONS OF THE FEE-CHARGING EMPLOYMENT AGENCIES CONVENTION (REVISED), 1949 (No. 96)

State	Registration date	State	Registration date
Algeria	19.10.62	Japan	11.06.56
Bangladesh	22.06.72	Libyan Arab Jamahiriya	20.06.62
Belgium	04.07.58	Luxembourg	15.12.58
Bolivia	19.07.54	Malta	09.06.88
Brazil	21.06.57	Mauritania	31.03.64
Costa Rica	02.06.60	Mexico	01.03.91
Côte d'Ivoire	28.07.92	Netherlands	13.02.92
Cuba	03.02.53	Norway	29.06.50
Djibouti	03.08.78	Pakistan	26.05.52
Egypt	26.07.60	Panama	15.07.71
Ethiopia		Poland	25.10.54
Fed. Dem. Rep. of	30.04.91	Portugal	07.06.85
Finland	22.12.51	Senegal	22.10.62
France	10.03.53	Spain	05.05.71
Gabon	13.06.61	Sri Lanka	30.04.58
Germany	08.04.54	Suriname	15.06.76
Ghana	21.08.73	Swaziland	05.06.81
Guatemala	03.01.53	Sweden	18.07.50
Ireland	13.06.72	Syrian Arab Republic	07.06.57
Israel	19.06.61	Turkey	23.01.52
Italy	10.01.53	Uruguay	07.07.76

Total of ratifications: 41

[Has accepted the provisions of Part II] [Has accepted the provisions of this Convention] [Has accepted the provisions of Part III]

INTERNATIONAL LABOUR OFFICE
BUREAU INTERNATIONAL DU TRAVAIL
OFICINA INTERNACIONAL DEL TRABAJO

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